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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME:

95

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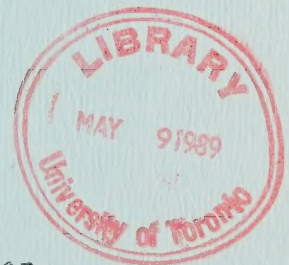
Thursday, April 27th, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Thursday, April 27th,
1989, commencing at 8:30 a.m.

VOLUME 95

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
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MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
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MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>DAVID LOWELL EULER,</u> <u>PETER PHILLIP HYNARD,</u> <u>JOHN TRUMAN ALLIN,</u> <u>RICHARD BRUCE GREENWOOD,</u> <u>CAMERON D. CLARK,</u> <u>GORDON C. OLDFORD, Resumed</u>	15982
Cross-Examination by Ms. Seaborn	15984

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
527	MOE Interrogatory Question No. 4, 5, 6, 8, 11, 12, 13, 15, 17 & 19 (Panel 10).	15982
528	Copy of letter dated April 6, 1989 from Ms. Murphy to Ms. Seaborn re: undertakings and interrogatory answers with respect to Panel 8.	15983
529	Excerpt of document entitled: Panel 3 Undertakings, amended on March 8, 1989.	15984

1 ----Upon commencing at 9:08 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Mr. McKibbon?

5 MR. MCKIBBON: Mr. Hunter asked me to
6 apologize to the Board for not being able to proceed
7 today. He is dreadfully ill with the flu and simply
8 can't proceed.

9 Arrangements have been made with the
10 Ministry of the Environment to go in our place and we
11 want to express our thanks to the Ministry and to the
12 Board for accommodating us.

13 Also Mr. Hunter asked me to introduce to
14 you Nancy Kleer. Ms. Kleer will be cross-examining
15 future panels beginning with Panel 11 for
16 Nishnawbe-Aski Nation and Windigo Tribal Council.

17 Thank you.

18 THE CHAIRMAN: Thank you, Mr. McKibbon
19 and the Board wishes Mr. Hunter a speedy recovery.

20 Ms. Seaborn, when you are commencing your
21 cross-examination today, I take it that you will want
22 to proceed uninterrupted.

23 MS. SEABORN: Yes, Mr. Chairman.

24 THE CHAIRMAN: So we will continue right
25 through with your cross-examination into next week if

1 you don't finish today before we come back to Mr.
2 Hunter's examination.

3 I take it -- Is Mr. Hunter going to
4 conduct this cross-examination or is it Ms. Kleer?

5 MR. McKIBBON: Mr. Hunter.

6 THE CHAIRMAN: Right. Okay.

7 MS. SEABORN: I am hopeful that I'll
8 finish today, Mr. Chairman.

9 THE CHAIRMAN: Okay. Are there any
10 preliminary matters?

11 Mr. Freidin?

12 MR. FREIDIN: Sorry, Mr. Chairman. I
13 wanted to make some comments about the draft direction
14 in relation to the moose guidelines that I indicated on
15 Tuesday that I would make. I have been able to obtain
16 some information which will hopefully be of assistance.

17 And the issues again that I would like to
18 address are the ones which arose on Tuesday regarding
19 the relationship between Exhibit 310, which are the
20 moose guidelines, page (ii), the last paragraph on that
21 page, and Exhibit 489 and, in particular, the last
22 paragraph on page 3 of that document.

23 You will recall the portion of 310 that I
24 am referring to is the section which requires a
25 Regional Director approval in certain circumstances,

1 and ADM approval in others. And the section of Exhibit
2 489 that I am referring to was the section which deals
3 with the reporting requirements of exceeding certain
4 things by two times, et cetera.

5 Before doing so, before directly dealing
6 with those paragraphs, I want to indicate that in
7 normal circumstances Dr. Euler would have been involved
8 in an ongoing basis with the development of Exhibit 489
9 and would not have been put in the difficult, and if I
10 might say, the somewhat unfair position of having to
11 give his interpretation of what a draft direction meant
12 without knowing whether, in his absence, a Ministry
13 interpretation was being considered or in fact had been
14 developed.

15 THE CHAIRMAN: Well, when you talk about
16 unfairness, surely that's unfairness perpetrated by the
17 Ministry upon itself, it has nothing to do with anyone
18 else?

19 MR. FREIDIN: The timing of it was
20 unfair.

21 THE CHAIRMAN: Well, so be it, but the
22 Ministry could have organized it otherwise; could they
23 not?

24 MR. FREIDIN: Well, I don't believe we
25 should neither get into that --

1 THE CHAIRMAN: Well, we are not going to
2 get into it.

3 MR. FREIDIN: All right.

4 THE CHAIRMAN: But when you are
5 characterizing it as being unfair, it sort of leaves
6 the impression that somehow somebody has done something
7 to Dr. Euler that shouldn't have been done and all I
8 think the Board is indicating is that --

9 MR. FREIDIN: I am not suggesting that.

10 THE CHAIRMAN: However, the Ministry
11 organized this particular document, they did it
12 themselves and have put Dr. Euler into an embarrassing
13 position, maybe they shouldn't have done it that way.

14 MR. FREIDIN: In any event, Mr. Chairman,
15 as you are aware this panel began in March and has been
16 under cross-examination since April the 4th and that
17 has had an effect on my ability or anyone's ability to
18 speak to Dr. Euler about that particular evidence.

19 Now, having made those introductory
20 comments I would like to advise you that the Ministry's
21 position on the relationship between Exhibit 489 and
22 Exhibit 310 is as follows:

23 That Exhibit 489 does not supersede the
24 direction provided in the last paragraph on page (ii)
25 of Exhibit 310. It is the Ministry's view that the

1 paragraph of Exhibit 489 which gave rise to the line of
2 questioning on Tuesday merely provides guidance as to
3 when, in relation to proposed harvest and for the
4 purposes of that guideline, proposed cuts will be
5 regarded as exceeding the guidelines over large areas.
6 Those are the words used in the guidelines.

7 The consequence of that situation
8 occurring is a requirement for certain documentation
9 and Regional Director approval and the direction merely
10 provides more certainty as to when those requirements
11 come into play.

12 In addition, it is the Ministry's
13 position that the direction in the last paragraph of
14 Exhibit 489 relates to the harvest activity or the
15 proposed cuts only and that is to the extent that the
16 last paragraph of Exhibit 310 addresses anything beyond
17 harvest cuts, Exhibit 489 is silent.

18 The Ministry believes that such
19 procedural direction is clearly within the intent of
20 the guidelines and is not an amendment of them. And if
21 I might in that regard, I think the Ministry can
22 confirm the evidence of Dr. Euler in Volume 83 at page
23 13967 where he stated that in relation to the section
24 of - we were talking about Exhibit 489 - it isn't going
25 to change the intent of the guidelines and it may not

1 change the application of the guidelines - by that I
2 take results on the ground - but what it will change is
3 a more stringent reporting and documentation of when
4 the guidelines are exceeded. And then he goes on.

5 Now, the second sentence -- that last
6 paragraph of the guidelines was broken up into two
7 sentences and the last sentence on page (ii) which was
8 discussed describes a requirement to obtain ADM
9 approval:

10 "...where a region intends to..."

11 - and I am quoting -

12 "...routinely sanction deviation from the
13 guidelines."

14 Discussion on Tuesday revolved around
15 such a requirement where the region intended to
16 routinely sanction deviation from the direction
17 provided in the area of concern portion of the
18 guidelines.

19 As you are aware, Mr. Chairman, in Panel
20 15 we will be describing the area of concern planning
21 process. You have heard a fair bit about that already
22 and as a result are aware that for each area of concern
23 there is a requirement to explain why normal operations
24 can be followed in that area of concern if that in fact
25 is the decision which is ultimately made, or provide

1 the reason that modified operations or a reserve is the
2 preferred method of protecting the value which gave
3 rise to the creation of an area of concern in the first
4 place.

5 There is no description nor was one
6 necessarily contemplated of a precise method of
7 obtaining the ADM's approval. And I can advise you
8 that based on Tuesday's discussion, the Ministry will
9 consider providing more explicit direction in that
10 regard and will address that issue in Panel No. 15.

11 Thank you, Mr. Chairman.

12 THE CHAIRMAN: Thank you.

13 Mr. Tuer?

14 MR. TUER: Well, Mr. Chairman, so far as
15 I am concerned what Mr. Freidin has just done is
16 present the Board with evidence. I am not at this
17 moment in a position to comment on that evidence nor
18 the implications flowing from it.

19 We have had a lot of discussion about the
20 two sections referred to by Mr. Freidin and commented
21 on by Mr. Freidin and I am certainly not conceding that
22 Mr. Freidin's remarks put that matter to bed, if
23 anything, to my mind at least, it adds more confusion
24 to what the Ministry is really saying.

25 And this is a matter of grave concern to

1 my clients who are trying to comply with the
2 requirements of the MNR and that's not something that
3 is in the future, that is something that is present
4 today, tomorrow and every day thereafter and if the MNR
5 is now postulating a further position on what the
6 guidelines mean and what the subsequent directive
7 means, I think that -- I submit that that further
8 position should be set out in writing and somebody
9 should be made available at this hearing to explain it
10 if explanations are necessary.

11 THE CHAIRMAN: Well, we can handle it in
12 one of two ways. I think the Board, Mr. Tuer, is in
13 agreement with your submission that the parties should
14 have an opportunity to both consider at some length the
15 position, if that is the total position of the Ministry
16 put forward by Mr. Freidin, but more importantly have
17 an opportunity to discuss it and question it and
18 cross-examine somebody on it because there may be
19 implications that flow from that policy that should not
20 forestall other parties being able to address.

21 Now, procedurally it is a matter of when
22 we arrange to do that and if this is going to be dealt
23 with again in Panel 15, perhaps the Ministry could
24 clearly put its position forward in writing on that
25 particular point by way of an amendment to perhaps the

1 Panel 15 witness statement or something like that, or a
2 separate document and then the parties would have an
3 opportunity at that time to deal with it.

4 I don't know if now is necessarily the
5 time that we have to deal with it.

6 MR. TUER: I don't have any -- normally I
7 would have no problem with that whatsoever, but I am
8 told by my clients' representatives that these
9 so-called directives are now in the field. And what do
10 they mean?

11 THE CHAIRMAN: So your concern is, is
12 that these are being applied right now?

13 MR. TUER: In some fashion or another
14 they are out in the field.

15 THE CHAIRMAN: And that if there is some
16 confusion, that the Ministry is going to clarify as to
17 their application, it would help your clients deal with
18 that and anybody else at this point in time forward.

19 MR. TUER: That's what my
20 cross-examination was directed to. My
21 cross-examination was directed to trying to clarify the
22 matter so that those in the field would know what they
23 are supposed to do.

24 MR. FREIDIN: Well, Mr. Chairman, I agree
25 with Mr. Tuer that he should have the opportunity to

1 question on these things. I think if I have an
2 opportunity to speak to him, we can make an arrangement
3 as to when that is probably most satisfactory to him.
4 There certainly are other -- there are witnesses in the
5 following panels that are going to deal with this.

6 THE CHAIRMAN: Well, perhaps though, Mr.
7 Freidin, if you are conferring with the senior
8 officials of the Ministry as to what the Ministry's
9 position is and you've just enunciated what it is to
10 the Board, perhaps if you produced a short document
11 outlining clearly what that position is and we dealt
12 with it perhaps in the panel after the
13 cross-examination is completed of, say -- I was going
14 to say Mr. Hunter, but then Mr. Hunter may want to deal
15 with that himself and we just have to allow him a
16 further opportunity.

17 MR. FREIDIN: I have no objection to that
18 as long as I can speak to Dr. Euler who hasn't been
19 involved --

20 THE CHAIRMAN: Well, I don't think any of
21 the parties would object, provided your discussion with
22 Dr. Euler is confined to this particular issue.

23 Does any party have any objection to
24 that?

25 MR. TUER: I have no objection to that.

1 THE CHAIRMAN: And then any of the
2 parties that have preceded that discussion would have a
3 further opportunity to enter the discussion on this one
4 issue, that would apply to the parties who have
5 previously examined this panel.

6 And I take it, Mr. Freidin, would you be
7 suggesting that Dr. Euler would be the one who would be
8 in a position to discuss it for the Ministry after the
9 Ministry has formulated its position and you've had
10 discussions with Dr. Euler on this?

11 MR. FREIDIN: Dr. Euler would be who I
12 would be suggesting to deal with it and when you ask
13 about -- I think the written material that will be
14 received will be similar -- quite similar to the
15 statements that I had made, so just so people know.

16 THE CHAIRMAN: Well, I'm just saying --,
17 I mean, it's in the transcript, but I am saying to you
18 if you want to reconsider and put forward a position
19 that goes beyond what you've said in the statement
20 that's now on the record, that can be adopted by Dr.
21 Euler or anybody from the Ministry, then you could do
22 it in that fashion.

23 See, Mr. Tuer, if they are not going to
24 change their position essentially from what Mr. Freidin
25 has already put on the record, it seems to me that that

1 could be adopted by the Ministry through one of their
2 witnesses and then cross-examined on it.

3 MR. TUER: That's fine, Mr. Chairman,
4 except that I heard this morning that Dr. Euler was
5 questioned about these matters and Dr. Euler, through
6 no fault of his own, was not knowledgeable about the
7 matters and the real position was this, thus and so as
8 Mr. Freidin has just explained it from some
9 unidentified, omnipotent power beyond Dr. Euler, and it
10 seems to me that if any further discussion about this
11 matter is going to have any meaningful result at all,
12 someone has got to be put forward who can tell us what
13 the real policy is.

14 THE CHAIRMAN: Well, I'm saying that that
15 is true, but in these discussions that Dr. Freidin
16 would have with Dr. Euler - and obviously Mr. Freidin
17 will be discussing it with other Ministry officials -
18 their official position might be agreed upon, it may be
19 the same as what was put on the record today, Dr. Euler
20 could adopt that as the official position of the
21 Ministry and you could question Dr. Euler on it.

22 If Mr. Freidin on the other hand feels
23 that another official from the Ministry is necessary to
24 put into the stand for the purposes of this one issue,
25 then that could be done as well.

1 MR. TUER: Well, I am quite prepared to
2 go forward on that basis, but I am certainly going to
3 reserve my right to require further information or
4 answers from someone who is not, as it appears Dr.
5 Euler is going to be, a mere cipher for somebody else.

6 I am not so sure how valuable that
7 process is going to be unless the people who can
8 identify the reasons for the policy and so forth are
9 going to be available.

10 THE CHAIRMAN: Well, Mr. Freidin, you
11 might consider who you would want on behalf of the
12 Ministry to address these issues, because it did arise
13 in the evidence, it is a situation that the Board
14 identified as well as other parties as perhaps at least
15 ambiguous in terms of its application, and the Ministry
16 is trying to clarify it.

17 In trying to clarify it, the other
18 parties should have an opportunity to question the
19 Ministry as to the application of these documents.

20 Ms. Seaborn?

21 MS. SEABORN: Just two comments, Mr.
22 Chairman.

23 First of all, as I recall this interim
24 reporting direction issue did come back up by Dr. Euler
25 in-chief and when we got into the difficulty was when

1 it was reduced to writing, and that was the request I
2 believe from Ms. Swenarchuk. So I think to say that
3 Dr. Euler has no knowledge or information about this
4 issue is clearly wrong. I mean, this was put in in his
5 direct evidence as Mr. Freidin asked him about.

6 The second thing is Mr. Tuer is concerned
7 about what's going on in the field. At a hearing like
8 this that is, you know, over a long period of time
9 there may be a number of things that are brought up in
10 this hearing and may or may not result in operating
11 changes in the field, we just don't know. And I am not
12 quite sure how this issue is any different from a
13 number of other issues that may be brought up by
14 parties. Clearly there is some confusion on the moose
15 guidelines and I intend to ask some questions on them
16 as well today.

17 I have a little bit of difficulty in us
18 getting in a situation where we are, at this stage,
19 going to call yet another witness to put in new
20 evidence. Mr. Hanna has already completed his
21 cross-examination and as has Ms. Swenarchuk and I am
22 not sure how profitable it's going to be.

23 It appears to me the remarks Mr. Freidin
24 put on the record were very consistent with Dr. Euler's
25 evidence-in-chief and if the cross-examination muddled

1 the waters, well so be it, that is what often happens
2 when parties cross-examine and Mr. Freidin has a chance
3 at his cross-examination.

4 THE CHAIRMAN: Well, with respect, Ms.
5 Seaborn, I am not sure the Board agrees. This is an
6 issue that is a relatively important issue in the
7 context of this panel's evidence and certain things
8 arose in the previous cross-examinations which the
9 Ministry is now seeking to clarify. And I think in
10 fairness to the parties they should have the
11 opportunity to further question that clarification and
12 if parties have already previously gone and were not
13 privy to this clarification, such as Ms. Swenarchuk and
14 Mr. Hanna, they should also have that opportunity.

15 MS. SEABORN: I certainly agree with
16 that, Mr. Chairman.

17 THE CHAIRMAN: And as to whether we
18 should deal with it now or deal with it later, it was
19 part of this panel's evidence - granted in this case
20 there are overlaps of many of the panels' evidence -
21 and we could, I suppose, wait until Panel 15, but
22 perhaps it would be in the interest of everyone to have
23 this clarified now, particularly when Dr. Euler is a
24 member of this panel and he won't be back or may not be
25 back in a future panel.

1 As far as any other witness being called
2 just to deal specifically with this issue, that in
3 itself would not necessarily pose a problem because
4 that witness would be confined solely to this issue.

5 You would not be allowed, Mr. Freidin, if
6 you were going to call somebody to deal with it, to
7 have that witness address any other issue. You chose
8 to present the evidence in this panel through these
9 people and they will be confined to that.

10 MR. FREIDIN: And rest assured that I
11 wouldn't do that.

12 THE CHAIRMAN: Well, I think perhaps we
13 will wait until the end of your cross-examination and
14 perhaps we might deal with this -- I was going to say
15 deal with this before Mr. Hunter starts next week, but
16 that may not give the other parties an opportunity to
17 consider it and be present for that either. Perhaps it
18 should be held off a bit further than that.

19 When could you have this addressed, Mr.
20 Freidin, or are you going to rely on what you've just
21 said?

22 MR. FREIDIN: I don't know. I didn't
23 anticipate quite the response that I got. I would have
24 to consider whether in fact, in light of the
25 circumstances, I wanted to perhaps say more than what

1 has already been said.

2 Monday -- if the direction of the Board
3 is that something in writing must be provided, I am not
4 in a position to say that I am going to be able to
5 provide that writing in sufficient time so people can
6 see it and cross-examine on it Monday, so...

7 THE CHAIRMAN: All right. Well, in any
8 event, this panel is going to be here probably at least
9 most of next week. Mr. Hunter will go on Monday and
10 then you have got re-examination and we were hoping to
11 get into Panel 11 by Wednesday.

12 So I think it would be better really if
13 you attempted to get whatever your position is on the
14 record early Monday so the parties would have an
15 opportunity to consider it and maybe we could deal with
16 this at the end of this panel.

17 MR. TUER: Wednesday, fine.

18 MR. FREIDIN: And if I just might add,
19 Mr. Chairman, you know, I sort of echo the words of Ms.
20 Seaborn about there are things ongoing all the time.
21 The Board has from time to time asked for clarification
22 of what is going on at the present time although they
23 may be matters that are in negotiation or in draft and,
24 in some respects, I think it is unfortunate that
25 circumstances have led us to this point, but that's

1 where we are and we'll deal with it in the fashion that
2 you have indicated.

3 THE CHAIRMAN: Okay. Ms. Seaborn, are
4 you ready?

5 MS. SEABORN: Yes, Mr. Chairman. Thank
6 you.

7 DAVID LOWELL EULER,
8 PETER PHILLIP HYNARD,
9 JOHN TRUMAN ALLIN,
10 RICHARD BRUCE GREENWOOD,
11 CAMERON D. CLARK,
12 GORDON C. OLDFORD, Resumed

13 MS. SEABORN: Good morning, panel.

14 DR. EULER: Good morning.

15 MS. SEABORN: I would like to start off,
16 Mr. Chairman, by introducing a couple of exhibits. The
17 first exhibit is a package of the interrogatories filed
18 by the Ministry of Environment pertaining to Panel 10.
19 I have only included in the package those
20 interrogatories that have not been filed to date and I
21 suggest we give the package one number.

22 THE CHAIRMAN: Exhibit 527.

23 MS. SEABORN: And for the record they
24 are: MOE Questions 4, 5, 6, 8, 11, 12, 13, 15, 17 and
25 19. (handed)

26 ---EXHIBIT NO. 527: MOE Interrogatory Question No.
27 4, 5, 6, 8, 11, 12, 13, 15, 17 &
28 19 (Panel 10).

1 THE CHAIRMAN: Thank you.

2 MS. SEABORN: The second matter, Mr.
3 Chairman, is a copy of a letter dated April 6, 1989
4 from Kate Murphy to myself answering a number of
5 outstanding undertakings and some interrogatory answers
6 that we had requested from Panel 8.

7 I am filing this at the moment just so
8 the material is on the record. I have numbered the
9 pages, it is quite a large package, and I will not be
10 referring to it today, but we may come back to this
11 exhibit at a later date. So if we could give the
12 package a number.

13 THE CHAIRMAN: Exhibit 528.

14 MS. SEABORN: (handed)

15 THE CHAIRMAN: Thank you.

16 ---EXHIBIT NO. 528: Copy of letter dated April 6, 1989
17 from Ms. Murphy to Ms. Seaborn re:
18 undertakings and interrogatory
answers with respect to Panel 8.

19 MS. SEABORN: And, Mr. Chairman, I
20 believe that letter was provided to all parties
21 receiving full-time correspondence.

22 The last filing I have is a response to
23 an undertaking arising from a question that I asked Dr.
24 Osborn in Panel 3 and this document is entitled: Panel
25 3 Undertakings, amended on March 8, 1989. This again

1 was provided to all parties under cover of a letter
2 from Ms. Murphy and enclosing in that letter were a
3 number of undertaking answers and what I have done is
4 taken out this particular answer because I will be
5 referring to it during my cross-examination.

6 And, Mr. Hynard, perhaps you could have a
7 look at the answer over the break.

8 THE CHAIRMAN: Exhibit 529.

9 MS. SEABORN: (handed)

10 THE CHAIRMAN: Thank you.

11 ---EXHIBIT NO. 529: Excerpt of document entitled:
12 Panel 3 Undertakings, amended on
March 8, 1989.

13 CROSS-EXAMINATION BY MS. SEABORN:

14 Q. Dr. Allin, MNR has a mandate to
15 protect fish habitat and my client, the Minister of the
16 Environment, has a mandate to protect water quality;
17 correct?

18 DR. ALLIN: A. Correct.

19 Q. Although fish habitat and water
20 quality are intrinsically related, they are regulated
21 by different legislation; aren't they?

22 A. Yes, they are.

23 Q. And through a collaborative effort
24 between the ministries, the Fish Habitat Guidelines
25 were developed to protect both water quality and fish

1 habitat?

2 A. That's correct.

3 Q. Could you just turn to page 1 of the
4 Fish Habitat Guidelines which is Exhibit 303. It is
5 actually page (i).

6 MR. FREIDIN: The preface.

7 DR. ALLIN: Yes, I have it.

8 MS. SEABORN: Q. If you look at the
9 second sentence it says:

10 "The guidelines were developed on a
11 biological basis for the purpose of
12 protecting fish habitat and water
13 quality." Do you see that?

14 DR. ALLIN: A. Yes, I do.

15 Q. Now, in your direct testimony you say
16 that the guidelines were conservative. Do you recall
17 that?

18 A. Yes, I do.

19 Q. And am I correct that when you say
20 that the guidelines are conservative, you mean that
21 they are scientifically or biologically conservative;
22 correct?

23 A. Yes.

24 Q. And the guidelines were not
25 conservative in the sense that they increase reserves

1 and place greater restriction on harvest operations;
2 would you agree with that?

3 A. I am not quite sure what you mean.
4 Would you please rephrase that?

5 Q. Sure. When you say that the
6 guidelines are conservative, you were not using the
7 word conservative in the sense that they take more
8 timber out of production than was previously the case.
9 That's not the intent of it; was it?

10 A. No, that's correct.

11 Q. And could you have a look at the
12 Panel 1 witness statement. Do you have that?

13 MS. SEABORN: And, Mr. Chairman, the
14 Board should have that in front of them. I asked Mr.
15 Mander to provide you with it, it is at page 212.

16 THE CHAIRMAN: Exhibit 6?

17 MS. SEABORN: Yes. Thank you, Mr.
18 Chairman.

19 Q. Do you have that in front of you?
20 And actually -- I'm sorry, it is page 242, and that
21 document is called A Policy for the Integration of
22 Other Resource Values in Timber Management.

23 DR. ALLIN: A. Yes.

24 Q. Now, under rationale, it says that:
25 "In the past, reserves were established

1 (notably along shorelines and travel
2 corridors) to accommodate other resource
3 values such as fisheries, wildlife
4 habitat and scenic views. Within these
5 reserves normally no timber management
6 operations were permitted. The net
7 effect of this approach was that reserves
8 tied up merchantable timber and did not
9 always provide appropriate solutions for
10 the protection of management of other
11 resource values."

12 And then underneath the Intent Section,
13 one of the intents that is identified in this policy
14 under (i) is:

15 "To increase the amount of timber
16 available by providing opportunities for
17 timber management operations in areas
18 previously identified as reserves."

19 Correct?

20 A. Yes.

21 Q. And that could be called the former
22 approach which was the doughnut approach. And then you
23 developed this policy to try and get away from the
24 doughnut approach; is that correct?

25 A. I would say that the basic objectives

1 for developing the current Fish Habitat Guidelines are
2 based largely on the rationale that is expressed here
3 under intent, yes.

4 Q. Thank you. And I was interested in
5 looking at your training message on the guidelines
6 which is Exhibit 492. And if you could turn to page 3
7 of the training message for the fish guidelines.

8 A. Yes, I have them.

9 Q. And the issue that is identified in
10 the training message is that many companies and
11 districts are encouraging the 60 or 90 metre doughnut
12 approach. Do you see that?

13 A. Yes, I do.

14 Q. And your training message or response
15 is to the effect that if timber is lost due to
16 application of the doughnut approach, this is not
17 something that has been imposed on the industry by MNR?

18 A. Yes, that's the way I read it.

19 Q. And would it be fair to say that the
20 message you were trying to get across in this document
21 is that if there is a loss of timber to the industry,
22 then that loss is not as a result of them having to
23 comply with the guidelines?

24 A. That's correct. If the loss results
25 from the use of the doughnut approach.

1 Q. That's right. Because what you have
2 tried to do in the guidelines is have a more flexible
3 approach?

4 A. That's right, to get away from
5 standard doughnuts.

6 Q. That's right. Now, with respect to
7 the policy that I just looked at that was contained in
8 the Panel 1 witness statement, I think the Board has
9 heard evidence through earlier witnesses that this
10 policy has now been superseded by the area of concern
11 planning process. Are you aware of that?

12 A. I am not aware of the evidence that
13 was given on that point.

14 Q. Are you aware of that fact?

15 A. I believe it's true.

16 Q. Can any of the other panel members
17 confirm that for me?

18 MR. FREIDIN: I can confirm that it has
19 been rescinded.

20 MS. SEABORN: Q. And I take it that the
21 spirit of that policy remains intact through
22 application of the area of concern planning process?

23 DR. ALLIN: A. Yes, it does.

24 Q. Dr. Allin, could you just have a look
25 at the Moose Guidelines for a moment, Exhibit 310 and,

1 in particular, could you turn to page 15 which is a
2 map. Do you have that in front of you?

3 A. Yes, I do.

4 Q. Would you confirm for me that both
5 Spear's Lake and Watershed Lake provide lake trout
6 habitat?

7 A. I simply don't know.

8 Q. If you look at page 14, Dr. Allin,
9 under solutions it refers to 120-metre area of concern
10 is required around lake trout lakes. I had taken that
11 to tell me that this is a lake trout lake.

12 A. Yes, and I see in the first paragraph
13 under site it indicates that in fact both lakes do
14 provide habitat for lake trout.

15 Q. Now, if we look at the map on page
16 15, the application of the guidelines in this example
17 has led to a shoreline reserve in three associated
18 corridors; correct?

19 A. Yes.

20 Q. And Dr. Euler, it is not unusual to
21 find moose along a shoreline corridor such as that; is
22 it?

23 DR. EULER: A. No, it's not unusual.

24 Q. Now, Dr. Allin, the example that is
25 in the moose guidelines refers to application of these

1 guidelines. Would you agree with me that if we applied
2 the fish guidelines to these lakes that a shoreline
3 reserve would be required on these lakes for fish
4 habitat purposes?

5 DR. ALLIN: A. Yes, it would.

6 Q. And if you go back to page 14, under
7 solutions, in the last line it stipulates that after
8 ten years when the cuts have regenerated the corridors
9 can be cut?

10 A. Yes.

11 Q. And Dr. Euler, would you agree that
12 this is really the same thing as saying that if late
13 winter habitat is adequate a return cut can occur when
14 regeneration reaches two metres?

15 DR. EULER: A. Yes, I think so.

16 Q. Now, Dr. Allin, if these two lakes on
17 page 15 were warm water lakes, then pursuant to the
18 fish guidelines 50 per cent of the shoreline reserve
19 would not be -- sorry, 50 per cent of the shoreline
20 reserve could be cut in the return cut; correct?

21 And I am assuming -- let's just take as
22 an example these are warm water lakes.

23 DR. ALLIN: A. Yes.

24 Q. Under application of the Fish Habitat
25 Guidelines you could go in and cut 50 per cent on the

1 return cut?

2 A. It would be -- the option is there to
3 return and cut up to 50 per cent. That would be a
4 maximum figure and depending on the location of
5 critical fish habitats, it might or might not be
6 possible to do that.

7 Q. Okay. Now, Mr. Clark, suppose in
8 this example we had some tourism concerns around these
9 lakes. Now, in the example I just went through with
10 Dr. Allin you could have the same result by applying
11 the 50 per cent reserve chevron cuts; would you agree
12 with that?

13 MR. CLARK: A. Yes, possibly.

14 Q. And, Dr. Allin, if we have a
15 hypothetical situation like the one I have just gone
16 through where we have three sets of guidelines that
17 could apply to lakes, there is no question in terms of
18 adding up the reserves, the reserves are not cumulative
19 in the sense that you create a reserve for fish
20 purposes, for moose purposes and perhaps for tourism
21 purposes and that doesn't mean your reserves get any
22 bigger?

23 DR. ALLIN: A. No, it doesn't. Where
24 reserves would overlap in the case of applying more
25 than one set of guidelines, normally the more stringent

1 prescription would apply.

2 Q. Okay. Now, Dr. Allin, I don't
3 believe there's a stipulation in the Fish Habitat
4 Guidelines as to when you do a return cut around warm
5 water lakes?

6 A. No, that's correct.

7 Q. Would it make sense to you to have
8 that return cut correspond to the direction given in
9 the moose guidelines; that is, to cut the leave blocks
10 in accordance with the two metre and six metre
11 requirements?

12 A. That would be one acceptable option I
13 believe. This is, I would add, a draft training
14 message on that point.

15 Q. That is just what I was looking to.
16 Now, you said that that would be one acceptable option.
17 In looking at the draft training message, it appears to
18 me that that is the direction where you are heading at
19 the moment?

20 A. Yes, that is the basic approach I
21 believe that is suggested in the training message.

22 Q. Thank you.

23 MR. TUER: Which page?

24 MS. SEABORN: Page 4 underneath the fish
25 guidelines.

1 MS. SEABORN: And the training message is
2 Exhibit 492. Mr. Chairman, it's with some trepidation
3 that I move into the area of the moose guidelines, I
4 must say.

5 I have tried, Mr. Chairman, in light of
6 all the conversation and discussion that has gone on
7 about the moose guidelines to be as specific as
8 possible, and I am going to attempt not to cover ground
9 that has been covered and maybe we can even clarify
10 some of these matters this morning.

11 DR. EULER: I feel the same trepidation.

12 MS. SEABORN: I am sure you do, Dr.
13 Euler.

14 THE CHAIRMAN: I suppose it is the Board
15 as being the only party that approaches these without
16 any fear whatsoever.

17 MS. SEABORN: Q. Okay. Dr. Euler, in
18 thinking about this matter over the last week I have
19 tried to summarize in about five points where I see the
20 situation withstanding with the moose guidelines.

21 Now, your testimony has been first that
22 MNR's current moose population target on a
23 provincial-wide basis is 160,000 moose for the year
24 2000; correct?

25 DR. EULER: A. Yes.

1 Q. And that target is a quantitative
2 target; correct?

3 A. Yes, that's right.

4 Q. And in terms of management
5 objectives, your objective with respect to moose is to
6 reach that population target by the year 2000?

7 A. Yes.

8 Q. And in your testimony you have told
9 us that in order to meet your objective you need to
10 control both moose habitat and the hunters?

11 A. That's right.

12 Q. Your evidence has also been that
13 moose is a featured species and that implementation of
14 the guidelines will provide habitat for approximately
15 70 per cent of all vertebrate species?

16 A. Yes, in the area of the undertaking,
17 yes.

18 Q. Yes. And the last point - and this
19 is something that we have heard from earlier panels and
20 from yourself - is that the application of the
21 guidelines is mandatory?

22 A. Yes.

23 Q. Okay. Now, with those statements in
24 mind as given facts, I am going to ask you a few
25 questions on where we go with those premises in mind.

1 First of all, Dr. Euler, the selective
2 harvest program for moose operates across the area of
3 the undertaking; correct?

4 A. Yes.

5 Q. And to put it another way, there is
6 going to be a moose hunt this season in every timber
7 management unit across the area of the undertaking?

8 A. See, I can't guarantee in every
9 single management unit; most of them, certainly. There
10 may be some units somewhere, for example the Chapleau
11 Crown Game Preserve doesn't have hunting but it would
12 have some timber management units. So in those units
13 there wouldn't be any hunting.

14 Q. Okay.

15 A. So there would be that exception to
16 the generalization that you made.

17 Q. But, as a general rule, if we look at
18 the area of the undertaking that we are dealing with in
19 this Class Environmental Assessment there is also a
20 moose hunt pretty well across that whole geographical
21 area?

22 A. Yes, in general, with a few
23 exceptions.

24 Q. And each year, because of the
25 selective harvest program you know the number of tags

1 you have issued and you can, and in the past you have,
2 evaluated whether or not you are meeting your
3 objectives with respect to a population target based on
4 the number of tags that are issued?

5 A. That's -- the number of tags, yes, is
6 a very important part of that process.

7 Q. And that is a quantitative
8 calculation?

9 A. That's right, yes.

10 Q. And that is something that is quite
11 easy to do?

12 A. Well, let's not call it easy. It's a
13 difficult job but it's feasible and is done.

14 Q. And it's something you do now?

15 A. Yes.

16 Q. And you have also said in your
17 evidence that you have been very tough on hunters and I
18 think you replied to Mr. Martel's enquiry on this issue
19 that you have taken a fair amount of criticism for your
20 selective harvest program?

21 A. Yes. Well, not so much for the
22 selective harvest program itself because there is a lot
23 of support for that, but we have taken criticism over
24 the distribution of the tags, how they were
25 distributed, the fact that certain individuals didn't

1 get them when they thought they should get them, and so
2 on.

3 Q. And you have also told us that the
4 herd is increasing, it has been doing better since the
5 late 70s, early 80s?

6 A. Yes.

7 Q. And because of the focus in the 80s
8 being on the issuance of moose tags, I believe you have
9 told us as well that you are now trying to focus more
10 on providing good habitat to reach your population
11 target?

12 A. That's right.

13 MS. SEABORN: Now, just before I leave
14 the topic of the moose hunt, I am advised by Mr.
15 Sutterfield that the deadline is fast approaching for
16 him to get his moose tag and put his name in the
17 lottery for next fall. And it seems to be paramount to
18 Mr. Sutterfield at the moment as to when the Board is
19 going to sit in October so he can plan his week of
20 moose hunting.

21 So if the Board would keep that in mind,
22 it would keep my work...

23 MR. MARTEL: He might not get a tag.

24 DR. EULER: I don't think he would
25 criticize though if he didn't.

1 THE CHAIRMAN: Might be looked upon as
2 favourtism, so perhaps you should not issue him a tag.

3 DR. EULER: We will think about that, Mr.
4 Chairman.

5 MS. SEABORN: Q. Could you turn, Dr.
6 Euler, to Exhibit 499 which is your paper on how
7 clearcutting affects wildlife management. And if you
8 could turn to page 18. Do you have that, Dr. Euler?

9 DR. EULER: A. Yes, I have it here, My
10 index system -- my library card system has just failed
11 me temporarily, but I will have it. It is here, I saw
12 it earlier.

13 Q. That is fine.

14 MR. FREIDIN: If there's anybody who can
15 give me any help in that regard, it would be most
16 welcome.

17 THE CHAIRMAN: Hanging on to documents
18 seems to be a problem over the last couple of days.

19 DR. EULER: I don't know happened
20 happened to it, I had it here earlier. I am afraid I
21 am going to have to borrow a copy. I am sorry, Mr.
22 Chairman.

23 MS. SEABORN: Q. And if you could turn
24 to page 18.

25 DR. EULER: A. Yes, I have page 18.

1 Q. Now, do you see the paragraph
2 underneath Table 1?

3 A. Yes, I do.

4 Q. Okay. Partway through the paragraph,
5 the sentence that starts with 'improved'. Do you see
6 that?

7 A. Yes, I do.

8 Q. Now, you stated in your paper that:
9 "Improved control over the hunter kill is
10 now being undertaken and road access is
11 being studied to identify how it affects
12 moose kill. As these factors are
13 controlled more effectively, habitat will
14 probably become the major limiting factor
15 in the future."

16 A. Yes.

17 Q. I have forgotten, Dr. Euler, when was
18 this paper prepared?

19 A. Well, I forgot too, but it's about
20 1975.

21 Q. I don't recall the date. Okay.

22 A. It's noted in my curriculum vitae
23 with the date and I have just forgotten. It's
24 approximately 1975.

25 Q. That is fine. Now, one of the

1 messages, Dr. Euler, you have said in your evidence
2 that you wanted to leave with the Board was that you
3 have said that MNR wants to be judged by whether or not
4 you were achieving your moose objectives.

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Now, if good habitat and hunting
9 controls go hand-in-hand in achieving that moose
10 population target and in achieving that objective, then
11 evaluating the extent to which you are providing good
12 habitat is required; would you agree?

13 A. See, I am not sure that we need to do
14 that in an explicit way because what is really
15 important I think is how well we are attaining our
16 moose objective and there are some ranges within which
17 we can do that, some ranges of habitat quality and some
18 ranges of hunter control.

19 THE CHAIRMAN: Excuse me a moment but,
20 Dr. Euler, if you have only got sort of a quantitative
21 handle on the one side, the hunter control side, wasn't
22 part of the point of Mr. Hanna's cross-examination
23 yesterday as well that if you are providing more
24 habitat that would increase the moose population and by
25 virtue of that factor you might then be able to up the

1 kill in terms of numbers and still maintain your
2 target?

3 DR. EULER: Yes, that was clearly his
4 point, yes.

5 THE CHAIRMAN: You can't really feel
6 confident about adjusting necessarily the moose kill
7 side if you don't have the appropriate handle on what
8 contribution to the total picture the habitat side is?

9 DR. EULER: Well, see, that is why I went
10 back to the analogy of the two six guns. You see, the
11 knowledge is there to know exactly what the habitat is
12 but it's very costly to get that information. We can
13 get it, it's just how much is it going to cost and is
14 it worth the cost.

15 Now, we know the moose herd is
16 increasing. We are doing two things: We are
17 controlling kill by hunters and we are working on the
18 habitat, and we are just not sure which of those
19 activities we are engaged in is contributing most to
20 the increase.

21 MS. SEABORN: Q. Well, Dr. Euler, I
22 don't want to interrupt you, but that is precisely my
23 point. If you want to be judged by your objective and
24 your objective is a population target number and you
25 say that there are two ways of achieving your

1 objective, limiting hunters -- manipulating hunting
2 restrictions and providing habitat; if you can monitor
3 the hunting side of it, don't you need to make sure
4 that you evaluate, in some meaningful way, how you are
5 doing with providing the moose habitat?

6 I am not suggesting any elaborate
7 structure, I am just saying that on a theoretical level
8 doesn't it make sense to somehow evaluate how you are
9 doing in providing habitat?

10 DR. EULER: A. Well, sure. If you will
11 allow me to be very broad and general in how we
12 evaluate habitat, yes, then under that circumstance we
13 do evaluate habitat now, we do it in a broad brush way.

14 I can't show you how we have documented
15 this in every case, but each of our staff would be
16 constantly evaluating habitat and comparing it to this
17 ideal that we have over here and making that kind of
18 judgment as a routine part of their duties.

19 Q. And one of the ways of evaluating the
20 habitat, wouldn't that be in a review of a timber
21 management plan?

22 A. Oh yes, sure.

23 Q. Okay. And when you have a look at a
24 timber management plan, you would have an idea as to
25 the extent to which these habitat guidelines are being

1 applied and you could tell how you were doing on the
2 habitat side?

3 A. Oh yes, mm-hmm.

4 Q. Okay. And if you have got a hunt
5 across the area of the undertaking, then it seems to me
6 at least that consistent application of the guidelines
7 across that same geographical area would be important
8 as well in order to have a useful evaluation of those
9 guidelines?

10 A. And the Ministry has been very
11 concerned about consistent application of the
12 guidelines. The Ministry has been striving to achieve
13 that.

14 Q. Okay. And so you would agree that
15 that is an ideal that is worth working toward?

16 A. Well, I would like to modify it a
17 little bit just to make sure we don't forget the fact
18 that conditions across Ontario change dramatically and
19 so consistent application of the guidelines in areas
20 where the conditions are the same is what I would
21 advocate, not just simply consistency for the sake of
22 consistency.

23 Q. No, I am not suggesting consistency
24 for the sake of consistency. I am suggesting that you
25 would want to apply the guidelines with the same rigor

1 in all areas within the moose kill area?

2 A. Well, no, we are going to have to
3 disagree on that a bit too because the ability of the
4 land to support moose varies considerably and I think
5 it's better to apply the guidelines more rigorously in
6 areas that are inherently more capable of producing
7 moose than in areas that are inherently less capable of
8 producing moose.

9 Q. Well, presumably if you had an area
10 with a low moose population, if you provided more good
11 habitat you could increase the numbers in that area?

12 A. Sometimes you could, but other times
13 you may not be able to because there is an inherent
14 ability of the land to support moose and in areas where
15 the capability to support moose is relatively low, you
16 could apply those guidelines and not get the result
17 that you would get somewhere else.

18 Q. Okay. Well, I think we are going to
19 come back to that later briefly, I won't belabour it,
20 but let's look at it from another point of view.

21 Another reason for providing good moose
22 habitat and applying the guidelines consistently across
23 the area of the undertaking is because you are relying
24 on those guidelines to protect 70 per cent of the
25 vertebrate species?

1 A. Yes.

2 Q. It's not just the moose, you are
3 relying on them for the other 70 per cent?

4 A. Yes, that's right.

5 Q. And in terms of looking at other
6 wildlife objectives, the moose guidelines are the
7 cornerstone--

8 A. Right.

9 Q. --of that program?

10 A. Mm-hmm. That's right.

11 Q. Okay.

12 A. And that is why we have to do some
13 monitoring and have engaged in a monitoring process to
14 make -- to check on how well we are doing on that part
15 of it because we can meet the needs of those 70 per
16 cent without applying the moose guidelines everywhere
17 because other species have the same kind of
18 relationship with the land as moose do; some areas are
19 inherently more capable of producing other species of
20 wildlife, some are less capable.

21 And so there has to be this up and down
22 adjustment depending on the ability of the land to
23 support the wildlife species present.

24 Q. Well, there is some uncertainty in
25 terms of choosing the 70 per cent figure anyway, you

1 can never be one hundred per cent sure that by
2 providing habitat through the moose guidelines that you
3 are protecting all 70 per cent, there is always a
4 degree of uncertainty?

5 A. That's right, there is a degree of
6 uncertainty in all of these decisions.

7 Q. Sure.

8 A. The whole process of being a wildlife
9 biologist is uncertain.

10 Q. And I don't think anyone disagrees
11 with that, but if you are sacrificing the moose
12 guidelines in certain areas of the undertaking, then
13 you are also going to be sacrificing some of the
14 vertebrates within that 70 per cent figure.

15 You would accept that; wouldn't you?

16 A. No, I wouldn't accept that and I
17 don't think the word sacrificing is really quite the
18 correct word to use here.

19 We are constantly faced with competing
20 demands from people who want things from the forest and
21 it just is not always feasible to apply those
22 guidelines rigorously everywhere, it just isn't
23 possible and still meet the demands of the timber
24 industry for wood products or other people for other
25 desires.

1 Q. Okay. Well, let me just come at it
2 another way one more time. Would you agree that the
3 degree of uncertainty with respect to the species that
4 you are protecting will decrease the more places that
5 you provide that good habitat?

6 You are going to reduce your uncertainty
7 if you apply the guidelines and provide the habitat?

8 A. Well, I don't think so. Maybe we
9 could use a particular example.

10 If you were looking at an area -- a large
11 area of jack pine growing on a sandy soil - this is
12 this classic thing that we talk about all the time -
13 that is not inherently good moose habitat.

14 At the same time, it's a very specialized
15 habitat for some of the other vertebrates, most of whom
16 have adapted to a very clear disturbance forest
17 situation because that's the evolutionary history of
18 jack pine.

19 And so applying the guidelines less
20 rigorously on those areas should not have any inherent
21 difficulty with respect to the wildlife species that
22 are there. And in line with your question then, it
23 would not, in my view, reduce the uncertainty.

24 THE CHAIRMAN: Dr. Euler, you are only
25 applying the guidelines anyways in areas where there is

1 some timber activities; are you not?

2 DR. EULER: Yes, that's true.

3 THE CHAIRMAN: So that there is vast
4 areas of the province where there are no timber
5 activities--

6 DR. EULER: Right. Yes, that's a good
7 point, Mr. Chairman.

8 THE CHAIRMAN: --for which you would
9 apply none of the guidelines?

10 DR. EULER: That's correct.

11 THE CHAIRMAN: Including the tourism
12 guidelines, the featured specie guidelines or the fish
13 guidelines?

14 DR. EULER: That's right.

15 THE CHAIRMAN: They are just left in the
16 natural state.

17 DR. EULER: Yeah.

18 THE CHAIRMAN: And the 70 per cent of the
19 vertebrates fend for themselves. Is that effectively
20 right?

21 DR. EULER: That's correct. Yeah. I
22 think the area that we harvest each year is on the
23 order of 7 per cent of the area -- .7 per cent.

24 MS. SEABORN: Mr. Chairman, would this be
25 an appropriate time for the morning break?

1 THE CHAIRMAN: Very well.

2 MS. SEABORN: Thank you.

3 THE CHAIRMAN: We will take 20 minutes.

4 Thank you.

5 ---Recess taken at 10:20 a.m.

6 ---On resuming at 10:55 a.m.

7 THE CHAIRMAN: Thank you. Be seated,
8 please.

9 MS. SEABORN: Mr. Chairman, just before I
10 continue with my question, is it the Board's intention
11 to sit until the normal hour today in light of the
12 change of order?

13 THE CHAIRMAN: Well, that sort of depends
14 on where you think you are. Obviously we are going to
15 be into next week with this panel, and we were trying
16 to accommodate Mr. Hunter specifically because he felt
17 he could finish in the one day and may not be
18 reattending next week. I understand that you would be.

19 MS. SEABORN: I will be here, Mr.
20 Chairman.

21 THE CHAIRMAN: And it doesn't pose a
22 problem in that regard. How long do you figure you
23 still have left?

24 MS. SEABORN: I can't guarantee I will
25 finish today. What I would prefer to do would just be

1 to carry on in the normal course and if I don't finish,
2 I will take a very short time when we reconvene on
3 Monday.

4 And I can't say at this point whether it
5 is worthwhile for the Board to sit until two just so
6 that I finish. I wouldn't want the Board to do that
7 and then me say that I will be back on Monday anyway.

8 THE CHAIRMAN: Okay. Well, then perhaps
9 we will sit until the normal time which is normally
10 about -- well, perhaps we can sit until close to one
11 and then just break for the day, if that would be
12 agreeable?

13 MS. SEABORN: Would you prefer that I
14 continue, Mr. Chairman, and we not have another break
15 and then we finish at one, or we can have another short
16 break and go until 1:30 or so?

17 THE CHAIRMAN: Okay. Well, why don't we
18 go for about an hour and a half or so and see where you
19 are at that point, and if you have got a bit more that
20 you could fit in, then maybe we will take a short
21 15-minute break and we'll just go on for another half
22 hour or so.

23 We would like to get in as much time as
24 we can, because obviously this is helpful.

25 MS. SEABORN: Sure.

1 THE CHAIRMAN: Mr. Tuer?

2 MR. TUER: Mr. Chairman, Mr. Freidin
3 spoke to me during the break about the arrangements for
4 next week - and he can speak for himself - but I think
5 he will tell you that he is going to have some
6 difficulty providing the written statement by Wednesday
7 and suggested next Friday with perhaps the -- if it is
8 considered that further examination of witnesses arises
9 from it, that that could take place perhaps at the
10 conclusion of the examination-in-chief--

11 THE CHAIRMAN: Of Panel 11.

12 MR. TUER: --of Panel 11. That certainly
13 is totally satisfactory to me and sounds sensible.

14 THE CHAIRMAN: Okay. Any other parties
15 object to that arrangement?

16 (No response)

17 Very well. We will schedule it then for
18 the completion of the examination-in-chief of Panel 11.

19 MR. FREIDIN: Thank you, Mr. Chairman.
20 Thank you, Mr. Tuer.

21 THE CHAIRMAN: Ms. Seaborn?

22 MS. SEABORN: Q. Dr. Euler, the moose
23 guidelines were released in final form in 1988;
24 correct?

25 DR. EULER: A. Yes, that's correct.

1 Q. And I believe your evidence has been
2 that the guidelines have been around in various forms
3 for a number of years?

4 A. That's right.

5 Q. And that they have been developed
6 over quite a long period of time?

7 A. That's correct.

8 Q. Now, in your opinion are the
9 guidelines as they now stand based on a sound
10 biological rationale?

11 A. Yes.

12 Q. And you would include in that the
13 provision under the general guidelines with respect to
14 the size of clearcuts?

15 A. Yes.

16 Q. And if we turn to your paper, which
17 is Exhibit 499.

18 A. And that's: How Does Clearcutting
19 Affect Wildlife Management?

20 Q. Yes. Page 18, Table 1.

21 A. Page 18, Table 1. Yes?

22 Q. And you state in the table the size
23 of disturbance which produced good moose habitat and a
24 number of authors' conclusions on that issue?

25 A. Mm-hmm, yes.

1 Q. And the figure that we have in the
2 general guidelines is consistent with the range that is
3 found in Table 1 of Exhibit 499?

4 A. Yes, it is. I believe it is, yes.

5 Q. Thank you. Is there a biological
6 basis for the interim direction with respect to two
7 times the clearcut size?

8 A. No.

9 Q. And I think, Dr. Euler, your evidence
10 in response to some questions from Ms. Swenarchuk was
11 that you would consider clearcuts over 130 hectares to
12 be large and those under 130 hectares to be small?

13 A. Yes. From a wildlife biologist's
14 point of view when using that word, yes.

15 Q. Now, when you told us about the
16 interim reporting direction with respect to the moose
17 guidelines, you told us that one of the reasons for
18 having this interim reporting was to reign in the
19 bounds of flexibility?

20 A. That's correct.

21 Q. And if you look at Exhibit 489, which
22 is the Interim Direction. Do you have that in front of
23 you?

24 A. Yes, I do.

25 Q. Okay. If you look at the third page

1 at the top, I am interested in the statement that:

2 "Interim guidance on flexibility is
3 necessary for the following reasons:"

4 And one of the reasons that is listed is:

5 "To develop greater knowledge of the
6 relationship between population levels
7 and..." population "...change."

8 A. Habitat change I think it reads; does
9 it not?

10 Q. Oh, I'm sorry, yes. And it also
11 indicates in the direction that the way to do that, I
12 take it, is through monitoring?

13 A. Mm-hmm, that's right.

14 Q. Now, would you agree with me that
15 that sort of a relationship could not be effectively
16 monitored by reporting deviations for a two-year
17 period?

18 A. Yes, that's right. I would agree
19 with you.

20 Q. And would you agree with me that it
21 will make more sense to monitor closely the
22 effectiveness of the guidelines as written because
23 these are the guidelines that have a sound biological
24 basis?

25 A. Yes, I would agree with you. And

1 that's actually what we are doing, we are initiating
2 quite a major project to do exactly that.

3 Q. Now, I don't want to get into the
4 details again of the formula that's being proposed by
5 the Minister for deviation reporting because I think we
6 have been through that.

7 But irrespective of what formula you
8 applied, would you agree with me that the reasons that
9 drove the Ministry to putting forward such a proposal
10 are valid concerns today, and I am referring to the
11 reasons at the top of page 3?

12 Let me put it another way. Irrespective
13 of what the deviation reporting scheme is, it appears
14 to me that it is the Ministry's position that there are
15 some problems with respect to the guidelines and that
16 guidance on flexibility is required and four reasons
17 have been given?

18 A. I must be very tired because I am not
19 sure that I followed your logic there in that question.
20 Would you mind making it just a bit simpler for me,
21 please?

22 Q. Okay, I will try. The Ministry says
23 in this document that interim guidance on flexibility
24 is necessary and certain reasons are listed.

25 A. Yes, okay.

1 Q. And we have just discussed one of the
2 reasons is to understand the relationship between
3 population levels and habitat change?

4 A. That's right.

5 Q. And I think another reason we talked
6 about earlier was your example where you felt that, in
7 some instances, the guidelines were being applied
8 inappropriately and you gave the example--

9 A. Right.

10 Q. --of a large area being taken out of
11 timber production because the guidelines were applied
12 too stringently?

13 A. Too rote a manner I think we said.

14 Q. Okay.

15 A. Right, yes.

16 Q. Now, all I am driving at is that,
17 irrespective of what the deviation reporting scheme is,
18 the problems that you are having with flexibility of
19 the guidelines are still valid, they still stand?

20 A. Yes.

21 Q. They are concerns?

22 A. Yes, right.

23 Q. Okay. And presumably you would want
24 to somehow deal with these concerns?

25 A. Yes, indeed.

1 Q. And what I am suggesting is that:
2 Wouldn't it be better to deal with these concerns by
3 putting forward a deviation reporting scheme that did
4 not depend on this new formula in the Interim
5 Direction, that depended on what is in the guidelines
6 now?

7 A. Okay. I have a particular problem
8 with this because, yes, in my professional opinion
9 that's correct, and we had a lot of discussions about
10 the best way to do this in the Ministry, and I advanced
11 my position and the Ministry took a slightly different
12 position.

13 So, in my personal opinion, I agree with
14 you although after considerable discussion - and in my
15 opinion was aired very carefully and at all levels -
16 and the preponderance of opinion was somewhat different
17 from my own, and that's just a normal part of these
18 things.

19 Q. Well, that's helpful, Dr. Euler,
20 because you are put forward as a wildlife biologist
21 with expertise in that area, and what I am interested
22 in is your opinion, given that you have the background
23 in terms of giving the Board evidence as to the
24 biological bases for decisions.

25 A. Mm-hmm.

1 Q. Okay. Thank you. Dr. Euler, were
2 you here for the evidence of Panel 8?

3 A. Part of it I was.

4 Q. Could you have a look at Volume 71 of
5 the transcript. Perhaps Ms. Blastorah can provide that
6 to you.

7 MR. FREIDIN: Which volume?

8 MS. SEABORN: Volume 71.

9 MS. BLASTORAH: (handed)

10 MS. SEABORN: Q. And could you turn to
11 page 11988?

12 MR. FREIDIN: What page?

13 MS. SEABORN: Page 11988.

14 Q. Page 11988?

15 DR. EULER: A. Yes, I have that.

16 Q. Now, I was asking Mr. Straight in
17 Panel 8 some questions about the mechanics of reviewing
18 guidelines?

19 A. Yes.

20 Q. And if you look at line 4, I asked
21 Mr. Straight:

22 "Q. If your wildlife biologist, for
23 example, was reviewing a portion of a
24 timber management plan, would he be able
25 to tell from reading that plan where an

1 interdisciplinary team had chosen to use
2 their discretion in such a way as to
3 deviate from a guideline?

4 A. The nature of the guidelines,
5 and you were referring to the moose
6 guidelines?

7 Q. Just as an example.

8 A. The nature of those guidelines
9 is such that he should be able to review
10 the cutting patterns, the cutting maps;
11 if you will, the eligible stand and the
12 prescriptions that come in and be able
13 to generate a reasonable sense by that
14 whether or not the guidelines are being
15 applied."

16 Now, would that be your experience, Dr.
17 Euler?

18 A. Yes, it would be.

19 Q. Thank you. And, Dr. Euler, just one
20 more question on this point. When we look at the Moose
21 Habitat Guidelines for areas of concern, there is in
22 place now through the area of concern planning process
23 a procedure by which those decisions are documented;
24 correct?

25 A. Yes.

1 Q. Okay. And we are going to be
2 addressing that in Panel 15 I understand from Mr.
3 Freidin's comments?

4 A. Well, you best ask Mr. Freidin that
5 because I am not sure.

6 MR. FREIDIN: The area of concern
7 planning process will be addressed in Panel 15, yes.

8 MS. SEABORN: Thank you.

9 Q. Mr. Greenwood, I have asked Mr.
10 Mander to put up your drawing of Oba Lake which is
11 Exhibit 467?

12 MR. GREENWOOD: A. Yes, I see it.

13 Q. Okay. Now, Mr. Edwards asked you
14 some questions about Oba Lake and I just want to make
15 it clear that I have a few questions, but I am asking
16 them in the context of your experience at Oba Lake and
17 what happened approximately 10 years ago. I don't want
18 to get into what may or may not have happened since
19 that time. Okay?

20 A. Okay.

21 Q. Now, you were the unit forester for
22 the Magpie Forest in 1978; is that correct?

23 A. In actuality in 1978 it was the Franz
24 Crown Management Unit.

25 Q. The same area though?

1 A. Same area. Actually that's not quite
2 true either, but -- not exactly the same area, but
3 close enough.

4 Q. You were there?

5 A. I was there.

6 Q. Okay. And Oba Lake, I believe you
7 said, was one of your prime tourist lakes and it also
8 had a number of cottages on it?

9 A. It was a tourist outpost lake with
10 cottages on it, correct.

11 Q. Okay. Do you know ten years ago
12 whether that lake had been surveyed to AHIS standards?

13 A. I am not sure what AHIS is.

14 Q. Dr. Allin?

15 DR. ALLIN: A. Well, AHIS means aquatic
16 habitat inventory survey program.

17 Q. Right. Was that program in place in
18 1978?

19 A. Yes, it was.

20 Q. Do you know, Mr. Greenwood, whether
21 that lake had been surveyed pursuant to that program?
22 You don't know, or you don't think it had been
23 surveyed?

24 MR. GREENWOOD: A. I don't know.

25 Q. Okay. Now, if there were some

1 tourism lodges on the lake, I would expect that the
2 fish species would probably be known or there would be
3 a general idea from local knowledge?

4 A. That's correct.

5 Q. And in your evidence, Mr. Greenwood,
6 you pointed out that the resolution of peoples'
7 concerns regarding harvest around Oba Lake was
8 negotiated prior to the introduction of the fish, moose
9 and tourism guidelines; correct?

10 A. That's correct.

11 Q. And I think you also said at that
12 time MNR tended to approach the application of reserves
13 by designating fixed reserves?

14 A. That I think was the most common
15 application of reserves throughout the area of the
16 undertaking. In this particular unit, I don't think
17 that was the case.

18 Q. That's right. And I think both you
19 and Mr. Clark indicated that as things stood when you
20 were there you felt that parties' concerns regarding
21 harvest around that lake had been largely satisfied?

22 A. That's correct.

23 Q. And, Mr. Clark, I think you said as
24 well that this was a really good example of a unit
25 forester knowing his unit, designing his objectives,

1 and then designing a reserve to fit a particular
2 situation?

3 MR. CLARK: A. Absolutely.

4 Q. Okay. Now, Mr. Greenwood, the
5 skyline reserve that was developed, would you agree
6 with me that this is essentially the same type of
7 reserve that is encouraged in the tourism guidelines?

8 MR. GREENWOOD: A. It is my
9 understanding that it is one of the potential types of
10 reserves that can be used.

11 Q. So this sort of reserve is identified
12 in the tourism guidelines as being an option?

13 A. A variable with reserve, yes.

14 Q. Okay.

15 A. Just one correction. I wouldn't
16 classify the reserve that we used as a skyline reserve.
17 There was one significant portion of that reserve which
18 did have elevation that we protected in a skyline
19 fashion, but the total reserve was not a skyline
20 reserve.

21 Q. Would calling it a variable reserve
22 be more appropriate then?

23 A. That's the term I would use.

24 Q. Okay. And, Dr. Allin, the reserve
25 that was put in place around Oba Lake, it would conform

1 to the standards that are now in place today with
2 respect to the Fish Habitat Guidelines; would it not?

3 DR. ALLIN: A. I'm sorry, I'm not
4 totally familiar with the nature of the reserve around
5 Oba Lake. If it was a continuous reserve on all
6 portions of the shoreline in which timber was eligible
7 to be harvested, yes, then it would.

8 Q. I think it was something analogous to
9 say a 100- to 600-foot variable reserve?

10 A. Yes, that would be consistent.

11 Q. And, Dr. Euler, this type of reserve
12 provides good moose habitat; doesn't it?

13 DR. EULER: A. Yes, in general it does.

14 Q. Now, Mr. Greenwood, would you agree
15 with me that if you were faced today with exactly the
16 same concerns at Oba Lake that you had 10 years ago, if
17 you went to the three provincial guidelines that are
18 now in place you would be able to provide a solution
19 for Oba Lake that was in accordance with those
20 guidelines?

21 MR. GREENWOOD: A. I think I could.

22 Q. And the fact that you had to work
23 within the bounds of the guidelines would not have
24 affected your ability to deal with peoples' concerns
25 and come to an amicable solution?

1 A. That's a little bit harder question
2 in that as I have not worked with those guidelines as a
3 field forester. There may be aspects in there that
4 would cause some concern.

5 I'm not saying that with knowledge of
6 one, it is just that I haven't work with them and,
7 therefore, I would be somewhat reluctant to say across
8 the board there would not be concerns or it would have
9 been as easy. I don't know that.

10 Q. Mr. Clark, have you had experience
11 working with the guidelines?

12 MR. CLARK: A. I can't really say I have
13 had experience with the final approved version of all
14 the guidelines. When I was a district manager, I
15 believe in all cases we were dealing with draft
16 guidelines. They were, however, essentially the same
17 as the guidelines that have now been approved.

18 Q. Well, the solution, Mr. Greenwood,
19 that was ultimately reached at Oba Lake 10 years ago
20 would be in conformity with today's guidelines?

21 MR. GREENWOOD: A. I think so, yes.

22 Q. Okay. Thank you. Mr. Clark, I just
23 want to ask you a couple of questions about the tourism
24 guidelines, which is Exhibit 379. And if you could
25 turn to page 7 under Section 1.1, A New Policy.

1 MR. CLARK: A. Yes.

2 Q. Now, it is my understanding from
3 looking at these guidelines that what is mandatory
4 about them is that MNR or the company, depending on the
5 management unit involved, must collaborate with the
6 tourism industry?

7 A. That's correct. It is the process
8 that's mandatory.

9 Q. So in a situation like Oba Lake, it
10 would now be what I would prefer to call normal
11 practice for collaboration to take place?

12 A. That's correct.

13 Q. Okay. Now, I think your evidence has
14 been to the effect that where collaboration does not
15 result in a consensus being reached, someone has to
16 make the ultimate decision?

17 A. Yes, that's correct.

18 Q. And that decision rests with MNR?

19 A. Yes.

20 Q. And would you agree with me that if
21 collaboration did not result in the identification of
22 an area of concern, then the results of that
23 collaboration would not appear in the timber management
24 plan?

25 A. I think that is correct.

1 I think, on further thought, to the
2 extent that we identified a value and a preliminary
3 area of concern, there might be some record of the
4 issue, if you want, but it wouldn't find expression in
5 a table dealing with areas of concern because
6 ultimately it would not reach that status.

7 Q. That's right. Obviously you have to
8 reach the status of an area of concern before you make
9 it into those areas of the plan?

10 A. That's correct.

11 Q. Okay. Well then, if you didn't make
12 it, say, even to the cut of being a preliminary area of
13 concern, that am I correct in saying that would not
14 appear in the plan?

15 A. I think you are correct.

16 Q. Thank you.

17 A. The one point I have been reminded of
18 is that to the extent that there was supplementary
19 documentation associated with the plan, it could well
20 be that correspondence associated with that particular
21 issue would be on record.

22 Q. Okay.

23 MR. MARTEL: Would that show up then at
24 an open house?

25 MR. CLARK: Yes, it would. Initially in

1 the -- at the early stages, in the first information
2 centre where a values map was identified, it would
3 normally -- the value that had been identified would be
4 on the map, and to the extent that there was additional
5 documentation concerning that particular value, it
6 would normally be available at the open house.

7 MS. SEABORN: Q. Mr. Greenwood, you were
8 here throughout Mr. Armson's testimony during Panel 9?

9 MR. GREENWOOD: A. Yes, I was.

10 Q. And you will no doubt recall that
11 there was a number of questions asked of Mr. Armson
12 with respect to the effects of full-tree harvesting?

13 A. Correct.

14 Q. And a number of the questions
15 revolved around the studies that have been provided in
16 the Panel's 9 and 10 witness statements.

17 A. Correct.

18 Q. Could you turn to page 226 of the
19 Panel 10 evidence which is Exhibit 416A.

20 A. I have it.

21 Q. If you just look at the last line on
22 page 226. And you state in your report:

23 "When considering full-tree harvest,
24 conclusions are more tentative but there
25 is general agreement that given rational

1 management for the site (e.g. appropriate
2 choice of rotation, subsequent
3 regeneration) inputs of nutrients will
4 balance increased exports in foliage and
5 branches."

6 And then you go on to say that:

7 "An exception could be sensitive sites or
8 those of marginal fertility."

9 How would you define a sensitive site,
10 Mr. Greenwood?

11 A. Well, I think in earlier evidence it
12 was mentioned that both sensitive sites and marginal
13 fertility should be in quotes. I was using the
14 terminology that was in the literature that I was
15 referring to.

16 So the reference in this line would be
17 what Gordon and Timmer were referring to as sensitive
18 sites or those of marginal fertility.

19 Q. So you were relying on their
20 definitions when you put that statement in?

21 A. I was speaking to what they were
22 referring to as sensitive sites or those of marginal
23 fertility, correct.

24 Q. Do you yourself, as a forester, see a
25 difference between a sensitive site or a site of

1 marginal fertility?

2 A. I would see a difference between
3 those two terms in that if you are referring to
4 sensitive site I would have to ask: Sensitive to what.
5 If it was sensitive to fertility, then that could
6 include a site of marginal fertility.

7 Many of the authors just use the word
8 sensitive in a broad brush way and when they use it in
9 that way it causes some confusion as to what you are
10 referring to, sensitive to what.

11 Q. Mr. Hynard, would you be able to give
12 me a definition?

13 MR. HYNARD: A. Is that sensitive or
14 fragile or both?

15 Q. Both.

16 A. To me a fragile site is a site that
17 could be easily damaged. In a timber production
18 perspective, I think of one whose productivity could be
19 easily damaged or impaired.

20 I really don't have a sense of the
21 meaning of the word sensitive in relation to site. The
22 word sensitive means that it is responsive to or it can
23 sense or respond to a stimulus, and I really don't have
24 an understanding of what that term means in terms of
25 site.

1 Q. Okay. Mr. Oldford, would you have a
2 view on what a sensitive site is?

3 MR. OLDFORD: A. Not really much more to
4 add than what the other -- what Mr. Greenwood and Mr.
5 Hynard have said.

6 And when you think of the word sensitive
7 and fragile, you might have to also have in mind the
8 activity that was going to be undertaken with respect
9 to those areas.

10 If, for instance, normal logging practice
11 using narrow tires was to occur on a certain site, then
12 obviously sensitive has a different meaning than if
13 wide tires were used, then the site would not be
14 sensitive.

15 Q. Okay. Mr. Oldford, your evidence has
16 been that the large increase in the use of the
17 full-tree logging method is largely due to economic
18 considerations including availability of manpower,
19 changing technology and changing values in the
20 workplace?

21 A. Yes. Some of those are key
22 considerations.

23 Q. And it was identified in the
24 evidence, and in Panel 9, that the use of the full-tree
25 harvest method has increased from 15 per cent to 65 per

1 cent; correct?

2 A. In Panel 10?

3 Q. Yes.

4 A. Yes.

5 Q. And in your estimation, Mr. Oldford,
6 for the reasons that you have given, economic
7 considerations, et cetera, would you expect that the
8 use of this logging method will continue to increase
9 in the boreal forest?

10 A. I expect it will continue probably at
11 the level that it's at right now. There have been some
12 new technologies developed and, in some cases, there
13 may be even a shift back to some mechanized shortwood
14 harvesting methods and some shortwood harvesting
15 methods that have options of producing different
16 lengths of stems, say.

17 Q. I am a little bit confused by that
18 statement because I was left with the impression after
19 your direct testimony that you felt for the variety of
20 reasons that full-tree harvest was really the way we
21 were going to go.

22 A. For Ontario, yes, I believe it will
23 stay at the 65 per cent range and hover around that
24 range, yes.

25 Q. But you are not convinced that it's

1 going to increase -- its use will increase?

2 A. I am not convinced it will change
3 significantly from what it is say right now.

4 Q. Mm-hmm.

5 A. I have no evidence to that effect.

6 Q. Mr. Greenwood, would you agree with
7 Mr. Oldford's assessment on the 65 per cent figure
8 being accurate in the future?

9 MR. GREENWOOD: A. I wouldn't have any
10 basis to make that judgment.

11 Q. As a forester, would you have an
12 opinion? You're out in the field.

13 A. As a forester I would -- I tend to
14 agree with that statement, that there are still some
15 sites and some conditions which, for various reasons,
16 the decision would be to harvest it with the
17 tree-length or shortwood method.

18 Q. Okay.

19 Q. Mr. Hynard, your management unit is
20 located in the Great Lakes/St. Lawrence Forest;
21 correct?

22 MR. HYNARD: A. Yes.

23 Q. And would you say the amount of pine
24 on your unit has increased or decreased over the past
25 hundred years?

1 A. Decreased.

2 Q. Now, in your testimony you used the
3 term high-grading. Could you define that for me?

4 A. Yes. High-grading refers to a
5 logging practice in which the bigger and better trees
6 are removed and the others -- the other smaller and
7 poorer trees are left behind.

8 Q. And does that method also imply that
9 there isn't a regen treatment associated with it?

10 A. Yes, it implies that.

11 Q. And would you agree that the decrease
12 in pine on the Minden unit is the result of
13 high-grading?

14 A. No, no, I wouldn't do that, certainly
15 not by itself.

16 Q. What other factors would you take
17 into account?

18 A. The great depletions in white pine in
19 Minden occurred between 1860 and 1900 and they occurred
20 as a result of tremendous exploitation of that resource
21 to satisfy a market. The logging was more in the sense
22 of, all the pine were taken not just the bigger and
23 better ones, although it's true the associated species
24 were left.

25 The reason -- the principal reason that

1 pine was so badly depleted was this logging was
2 followed by repeated wild fires and the wild fires
3 destroyed the remaining seed source of white pine and
4 caused those lands that once grew white pine to convert
5 mainly to poplar and other hardwood species.

6 Q. Is the practice of high-grading still
7 common today?

8 A. Well, it's certainly not on my unit.
9 If we define that as saying removing a merchantable
10 portion of a stand, those trees which have a marketable
11 value and leaving behind trees that don't, yes, it
12 remains common and we gave evidence on the effects of
13 timber market constraints on implementing the
14 silvicultural harvest system.

15 Q. But weren't you referring to
16 selection cutting?

17 A. No, I wasn't.

18 Q. Okay. Now, the clearcut system is
19 the predominant silvicultural system in the boreal
20 forest; correct?

21 A. Yes.

22 Q. And would you agree that selection
23 cutting is not normally used in that forest?

24 A. Yes, I would.

25 Q. Now, when you are modifying

1 operations in a reserve in the boreal forest to take
2 out specific trees, would you agree with me that you
3 are not technically employing the selection
4 silvicultural system?

5 A. Yes, I would.

6 Q. And would you agree with me that in
7 effect what you are doing is high-grading?

8 A. It could be.

9 Q. Okay. Dr. Allin, do you know when
10 trees are selected to be cut from reserves around water
11 bodies what percentage are normally cut?

12 DR. ALLIN: A. I think I would have to
13 refer you to Mr. Hynard for an answer on that one.

14 Q. Mr. Hynard?

15 MR. HYNARD: A. Oh gosh, I really can't
16 tell you that answer. I'd have to really find someone
17 who is using those practices around water bodies to
18 give you a feel for that.

19 Q. Mr. Greenwood?

20 MR. GREENWOOD: A. Again, I don't have
21 any experience with that type of harvest around a water
22 body. I am not even sure that it's that common.

23 Q. There isn't any direction on that
24 point in the guidelines; is there, that you are aware
25 of?

1 A. Not that I'm aware of.

2 MR. HYNARD: A. I should point out the
3 distinction between reserve and the area of concern
4 itself. If it's classified as a reserve, then there is
5 no cutting within it; however, it could be part of an
6 area of concern in which partial cutting is permitted.

7 Q. That's right.

8 A. Within the reserve component, no
9 trees are removed.

10 Q. Okay. And if it's a reserve that
11 becomes an area of concern, the extent to which there
12 is cutting in that area is documented in any event in
13 that part of the planning process as modified
14 operations?

15 A. Well, there would be a prescription
16 for those modified operations. I'm not just sure of
17 what that detail might say.

18 Q. Well, Mr. Greenwood, that
19 prescription within an area of concern would tell you
20 how you were going to modify your operations for that
21 area of concern in the plan?

22 MR. GREENWOOD: A. That would be my
23 understanding, yes.

24 Q. Okay. Now, Mr. Hynard, no doubt you
25 will recall that there has been some discussion

1 concerning the documentation of rationale for
2 silvicultural decisions?

3 MR. HYNARD: A. Yes.

4 Q. The first discussion appears in the
5 transcript Volume 78. If you could just have that in
6 front of you, please. Could you turn to page 13095.

7 A. Yes, I have that page.

8 Q. Okay. Let's just go to 13099 first.
9 Do you have that?

10 A. Yes, I do.

11 Q. And your evidence was that:

12 "Very few operations occur on protection
13 forests simply because the land is
14 generally unfit for commercial timber
15 production, but occasionally they do and
16 they can occur there for several
17 reasons."

18 You'll recall that testimony?

19 A. I recall it. I don't see it here in
20 front of me.

21 Q. Okay. Page 10399, beginning at line
22 18. Oh wait, sorry, 13099. Is that what's confusing
23 you, is my error?

24 A. No, it was confusing Cam. I have
25 that line.

1 Q. That's because Mr. Clark was
2 listening to my numbers and figured out they were
3 wrong. Okay, sorry to mislead you. Let's start again.
4 Page 13099.

5 A. Yes, I have line 18.

6 Q. Okay. Line 18 and your
7 evidence-in-chief was that:

8 "Very few operations occur on protection
9 forests simply because the land is
10 generally unfit for commercial timber
11 production, but occasionally they do,
12 they can occur there for several
13 reasons."

14 Correct?

15 A. Yes.

16 Q. And one of the reasons that you gave
17 was inventory error?

18 A. Yes.

19 Q. And you would agree with me that
20 protection forests are managed primarily to exert this
21 beneficial influence on soils, waters and the overall
22 landscape?

23 A. I would change that slightly by
24 saying that protection forests are not normally managed
25 for timber production because generally the land is

1 unfit for that use.

2 Q. Okay. Well, the reason why I use
3 those words is because those are the words that appear
4 at page 17 of Exhibit 56 which is the Forest Resources
5 of Ontario.

6 A. Yes, I recognize that and I recognize
7 that quote and I have heard similar objective
8 statements like that in management plans also.

9 Q. Okay. And the reason why I also
10 looked look to that is because Mr. Freidin, on the page
11 before, when he asked you about a definition for
12 production forest reserve, read you in the definition
13 from the Forest Resources from Ontario.

14 A. Yes.

15 Q. You recall that?

16 A. I do.

17 Q. Okay.

18 A. I think that that's a generalized
19 statement. It doesn't necessarily follow that Site
20 Class 4 is managed for that purpose, that is a
21 management decision to make. I would agree that's very
22 common.

23 Q. Okay. And in any event, your
24 evidence has been that very few operations occur there
25 anyway?

1 A. Yes.

2 Q. Okay. Now, in terms of the inventory
3 error issue, that would be a situation where a stand
4 may be labeled in the FRI as Site Class 4 but it could
5 be converted to a better site class?

6 A. I am not sure that you have that
7 quite correct. It would be a stand labeled as Site
8 Class 4 on the inventory map--

9 Q. Right.

10 A. --which in fact when you went there
11 you found that the stand was Site Class 3 or better?

12 Q. Okay, that's fine. Suppose, for
13 example, you had a situation where on your unit you had
14 Site Class 4 maple, and that would be protection
15 forest?

16 A. Site Class 4 of any species would be
17 protection forest.

18 Q. Okay. And suppose you wanted to
19 convert it to Site Class 2, white pine.

20 A. Yes.

21 Q. You could go in and do that; couldn't
22 you?

23 A. Yes, in theory. In theory you could.

24 MS. SEABORN: Okay. And one of the
25 documents, Mr. Chairman, that is not an exhibit yet -

1 it was filed with the Panel 12 witness statement and it
2 has been referred to but not given an exhibit number -
3 is Mr. Hynard's model called a Decision-Making Model
4 for Forest Managers Using Economic Considerations.

5 Q. Mr. Hynard is going to be back in
6 Panel 12 to speak to this model and I am not going to
7 discuss it now, but I'm wondering if in the interim he
8 could run his model in such a way as to tell me the
9 economics of going in and cutting Site Class 4 maple
10 and then converting it to Site Class 2 white pine as a
11 hypothetical?

12 A. Let me give you an example right from
13 my own management plan then.

14 Q. Okay.

15 A. I could do that and settle it right
16 here.

17 Q. Sure. That will be helpful.

18 A. And I will quote a couple of sections
19 from it. The first section is from the background
20 information part of the plan, Section 3(i) entitled:
21 Forest Species in Stands which provides a description
22 of all of the various working groups on the unit.

23 And I am turning to the page entitled:
24 The Protection Forest Working Group, so it's a
25 description of what is there, and it reads:

1 "Despite the protectionist tone in its
2 name, the protection forest working group
3 is nothing more than the aggregate of
4 stands of Site Class 4. The protection
5 forest is a large working group..."

6 Oh I will skip that section, we don't
7 need all the verbosity.

8 On the following page it reads:

9 "The site class ratings are not an
10 evaluation of the site itself, but rather
11 of the height/age relationship of the
12 Predominating species. Therefore, a
13 shallow site which is rated as Class 4
14 for a moisture demanding tree such as
15 aspen may rank considerably higher for a
16 species which is better adapted to the
17 growing conditions, for example, white
18 pine."

19 Is that close to the hypothetical that
20 you had in mind?

21 Q. Sounds pretty good.

22 A. "In fact, despite the shallowness of
23 its soils, much of the protection forest
24 which is today aspen and birch did at one
25 time support reasonably good pine. The

1 evidence of charred pine stumps, now one
2 or more forest generations old everywhere
3 throughout this working group, tell a
4 sad tale of depletion and destruction.
5 Pine was eliminated from these lands by a
6 combination of clearcutting followed by
7 repeated fire, more of which will be told
8 in the history section on page 37."

9 Q. I think we are maybe getting more--

10 A. Okay. If I can leave that now and
11 turn -- that is a description of the case before us
12 which is very similar to the case that you described.

13 The objectives for that working group are
14 stated elsewhere in the plan, on page 272, and those
15 objectives are all broken down into --

16 Q. What I am asking about though is
17 specific stand conversion.

18 A. That's what I am getting to.

19 Q. Okay. As long as that's where we are
20 going, that's fine.

21 A. That's where we are going. Page 72
22 gives a strategy breakdown for -- or at least page 72
23 provides a strategy for the protection forest working
24 group and how it might contribute towards the
25 objectives of the plan. And it reads:

1 "The protection forest working group..."

2 Which I might add in Minden is very, very
3 large, it represents 44 per cent of the productive
4 forest land on my unit. It's very large.

5 Q. Protection forest or production
6 forest reserve?

7 A. Protection forest.

8 Q. Okay.

9 A. "The protection forest working group
10 makes no contribution to the forestry
11 objective of the unit. No timber cutting
12 nor silvicultural effort has occurred in
13 this working group on the unit during the
14 recent past. The assumption that Class 4
15 sites are too poor for the commercial
16 production of timber is largely correct.
17 Stands correctly labeled Site Class 4
18 may, however, contain pockets of
19 Site Class 3 within them such as in the
20 more deeply soiled draws and ravines.
21 Similarly, although rated Class 4 for
22 aspen, the pine component in a protection
23 forest stand may produce fine logs and
24 the site rate as high as Site Class 2 for
25 pine. In most cases, however, the

1 protection forest offers few profitable
2 extraction opportunities other than the
3 occasional high-grading of pine saw
4 logs."

5 It goes on to describe how much of the
6 present protection forest at one time supported better
7 stands and then it reads:

8 "The return of these lands to production
9 would require a massive undertaking of
10 land clearing, mechanical and chemical
11 site preparation, planting, assessment
12 and subsequent release. Since the
13 protection forest offers even less
14 attractive conversion economics than the
15 poplar working group, forest management
16 efforts are not prescribed for it."

17 So in that case -- in that particular
18 case it was not considered economically worthwhile to
19 put that land back into pine, even though, if it were
20 carried out, it would be productive again.

21 Q. Okay. And in your current timber
22 management plan is there any area of protection forest
23 that has been allocated for stand conversion?

24 A. Are you referring to the one that I
25 am preparing now?

1 Q. No, the one that is in place right
2 now.

3 A. Yes, I had Chuck Mason check it out.
4 He phoned for me during the break. During the last
5 eight years--

6 Q. Yes.

7 A. --there has been a total of 50 acres
8 of protection forest cut on my unit. I don't know the
9 total area of the cut during that time, but I would
10 guess it would be in the order of 6- to 8,000 acres.

11 Q. Okay. And on the basis of what
12 you've just told me in the plan that you are now
13 preparing - in the evenings I gather - is there any
14 amount of land that you anticipate being slated for
15 stand conversion?

16 A. For stand conversion or for cutting
17 within the protection forest working group?

18 Q. For stand conversion within
19 protection forest?

20 A. Well, I can't be absolutely
21 definitive on that. I have been allocating stands and
22 a number of the Site Class 3 poplar stands which I have
23 allocated have had Site Class 4 stands adjacent to them
24 and I have inspected those adjacent stands just to be
25 sure that they were correctly classified by the

1 inventory, and I have in fact found several stands
2 which are labeled Site Class 4.

3 Q. Mm-hmm.

4 A. And which I believe to be Site Class
5 3 or better and I have allocated for harvest.

6 Q. Okay.

7 A. With that particular -- with those
8 stands and that particular working group and site type,
9 there are two options -- there will be two options in
10 the silvicultural groundrules. One is for clearcutting
11 and regeneration to poplar and the other is for
12 conversion to white pine.

13 Q. Okay. Getting back to the example
14 that I first gave you and you gave me the information
15 on the plan. The information you gave me, is that from
16 the plan you are writing now, or --

17 A. No, that is from the old one.

18 Q. That is from the one that is in place
19 right now?

20 A. Yes.

21 Q. Okay. And your conclusion was that
22 it would be uneconomic; correct?

23 A. Yes, that was my conclusion.

24 Q. I think that was the bottom line of
25 what you told us?

1 A. For my circumstances, yes.

2 Q. Yes. Okay. Would it still be
3 possible for you to take that example and put it
4 through your model between now and Panel 12 just so we
5 have a number?

6 A. Yes.

7 Q. I would be interested in seeing the
8 magnitude that you are talking about.

9 A. Okay. If you give me exactly what it
10 is you would like, I will do it for you.

11 Q. Okay.

12 MS. SEABORN: Maybe, Mr. Chairman I could
13 speak with Mr. Hynard after the panel is over and deal
14 with it in that fashion rather than taking up time.

15 THE CHAIRMAN: Very well.

16 MS. SEABORN: If that's acceptable to Mr.
17 Freidin.

18 MR. FREIDIN: Yes.

19 MS. SEABORN: Thank you.

20 Q. Now, one of the exhibits I filed at
21 the outset, Mr. Hynard, was an answer to an undertaking
22 that had been given in response to some questions I had
23 asked Dr. Osborn back in Panel 3 and you have had an
24 opportunity to review that?

25 MR. HYNARD: A. Yes I have.

1 MS. SEABORN: And, Mr. Chairman, that is
2 Exhibit 529.

3 Q. Now, could you turn to the second
4 page of the response. A summary of the undertaking is
5 contained and it is:

6 "To advise the Board whether a summary
7 can be provided of all timber management
8 activities which took place on protection
9 forest (i.e., Site Class 4) on one --"

10 MR. HYNARD: A. Excuse me, Ms. Seaborn.

11 Q. Sorry?

12 A. I am not up with you yet. You are on
13 page 2 or on the second page of the response?

14 Q. I thought they were the same, but
15 page 2. Do you have the four-page exhibit, 529?

16 A. Yes, I do.

17 Q. Okay. Second page you will see there
18 is -- under the heading: Undertaking?

19 A. Yes, I have that.

20 Q. Have you got that?

21 A. Mm-hmm.

22 Q. Okay. I will start again then.

23 "To advise the Board whether a summary
24 can be provided of all timber management
25 activities which took place on protection

1 forest (i.e., Site Class 4) on one
2 management unit for a one-year period
3 which will be a representative sample for
4 purposes of determining the extent to
5 which those activities were directed
6 toward changing the existing working
7 group."

8 Now, if you turn to the last page of the
9 exhibit under Sample 1, the Cochrane Forest?

10 A. Yes.

11 Q. Now, the figures that we received
12 tell us that in the Cochrane Forest 4.6 per cent of the
13 productive forest was labeled as protection forest;
14 correct?

15 A. I see that figure, yes.

16 Q. And during the year examined 8.4
17 hectares were harvested, 4.0 hectares are now roads, .5
18 hectares are now planted with black spruce and 3.9
19 hectares were classified as natural regeneration for
20 spruce?

21 A. Yes, I see is that.

22 Q. And the figures are somewhat similar
23 for the Armstrong Crown Management Unit in order of
24 magnitude?

25 A. Yes.

1 Q. And what I am getting at is that we
2 are talking about very small amounts; would you agree?

3 A. Yes, yes. And my own unit confirms
4 that, it's a small amount.

5 Q. Okay. And the information given on
6 these management units are representative of the area
7 of the undertaking?

8 A. Well, I believe that was part of the
9 undertaking was to pick units that were representative,
10 I believe.

11 Q. Right. Okay. Now, in your evidence,
12 Mr. Hynard, you told us that it would not be necessary
13 to document the rationale for making any silvicultural
14 decision; correct?

15 A. Yes.

16 Q. And you included in that operations
17 in protection forest?

18 A. Yes.

19 Q. Given the figures that we have just
20 looked at, wouldn't you agree with me that if you had
21 to document the rationale for operating in protection
22 forest, that wouldn't be a big job?

23 A. I think my original statement was
24 that it would not be necessary and these figures
25 confirm that opinion, that it wouldn't be necessary.

1 Q. Okay. I'm not asking about whether
2 or not -- I understand that that's your position and
3 it's not necessary. What I am asking now is that we
4 are dealing with a very small geographical area. Would
5 you not agree with me that it would not be a big job?

6 A. To document the rationale for the
7 reason of operating in there?

8 Q. In protection forest?

9 A. Yes. Well, in itself that's right,
10 it would be just another straw on the camel's back.

11 Q. So it would not be a big job; yes?

12 A. Not in itself, no.

13 Q. Okay.

14 A. Not for those units and those
15 figures, not at all.

16 Q. Okay. And in terms of documenting
17 the rationale for deviation, the other thing we have
18 heard is that you do not believe it's necessary to
19 document the rationale for deviating from silvicultural
20 guides; correct?

21 A. Yes, yes, for the same reasons and I
22 guess there is a supplementary reason there and that is
23 that it's difficult to know exactly when you are
24 deviating.

25 Q. Okay. I don't want to get into all

1 of the reasons, I just want to summarize just so I
2 understand your position.

3 A. Yes.

4 Q. Now, when we are talking about
5 documenting the rationale in a timber management plan,
6 this occurs within the area of concern planning
7 process; correct?

8 A. Yes.

9 Q. And areas of concern are non-timber
10 values; correct?

11 A. Yes. There is another forest use or
12 value identified as a concern there.

13 Q. So any documentation of rationale for
14 operations would relate solely to non-timber values?

15 A. Yes, it would.

16 Q. Now, I am not sure about your
17 management unit, but we have heard evidence earlier, I
18 believe from Mr. Armson, that as a general rule areas
19 of concern make up a small geographical area of most
20 management units?

21 A. Well, that's certainly not true of my
22 unit.

23 Q. No.

24 A. They make up 83 per cent of the
25 stands that are allocated for harvest during the last

1 planning period.

2 Q. Right. And would you agree that your
3 unit is somewhat of an anomaly given the area of the
4 province that it's located in?

5 A. Given Mr. Armson's evidence, yes.
6 And, yes, that's possibly true.

7 Q. Okay. We have also heard quite a bit
8 of testimony about a concept of a rulebook. Just so I
9 am clear, when you spoke of a rulebook with Mr.
10 Freidin, you didn't have a specific document in mind;
11 did you?

12 A. No, I didn't.

13 Q. And no rulebook for making
14 silvicultural prescriptions now exists; does it?

15 A. No, it doesn't.

16 Q. And it appears clear to me it's MNR's
17 position that one should not be written?

18 A. That's right.

19 Q. Okay. And today, on your management
20 unit, you are not hampered in any way in making
21 silvicultural decisions because you have this rulebook
22 that you have to follow?

23 A. That's right.

24 Q. And I think you've also said that you
25 don't believe that a forester should be restricted by

1 using, for example, the Spruce Guide book as a
2 rulebook; it's a tool, not a rulebook?

3 A. That's right.

4 Q. Okay. Now, wouldn't you agree with
5 me that forest management is not without rules, or what
6 I would prefer to call normal practices. Let me give
7 you just a couple of examples. You do not normally
8 selection cut black spruce; correct?

9 A. Correct.

10 Q. You would not normally plant poplar
11 on a jack pine sand flat?

12 A. That's true.

13 Q. And for a forester not doing these
14 things would just be good practice, good common sense?

15 A. Yes.

16 Q. Now, the Spruce Guide, which is
17 Exhibit 382, contains the current timber management
18 practices for spruce; correct?

19 A. Yes.

20 Q. Okay. And would it be fair to say
21 that applying prescriptions as set out in that guide
22 constitutes normal practice for a forester dealing with
23 spruce?

24 A. I think the guide describes normal
25 practices, practices which are normally found across

1 Ontario.

2 Q. And you would hope that a unit
3 forester dealing with spruce would interpret -- would
4 operate within the bounds of the guide in the sense
5 that that would be his normal practice?

6 A. It may not necessarily be. You know,
7 I do deviate myself from the silvicultural guides. I
8 can't say that all of my silvicultural practices are
9 described in silvicultural guides, in fact I can tell
10 you that they're not.

11 Q. And where are they derived from, your
12 own personal experience?

13 A. Yes, my prescriptions for my unit
14 based on my knowledge of the area in forestry and past
15 results under similar conditions.

16 Q. Okay. Now, we heard in Panel 8 that
17 the use of the silvicultural guides is considered
18 mandatory by MNR and that these guides are used to
19 develop the groundrules in a timber management plan;
20 correct?

21 A. That's right.

22 Q. And I think there was evidence to the
23 effect that it's MNR's position that environmental
24 protection is inherent in these groundrules?

25 A. Yes.

1 Q. And the prescriptions that are laid
2 out in the groundrules are those that would be employed
3 in normal operating areas?

4 A. Yes.

5 Q. Could you just turn to page 146 of
6 the Class Environmental Assessment. Do you have that
7 in front of you, Mr. Hynard?

8 A. Yes, I do.

9 Q. And at page 146, if you can look down
10 to line 26?

11 A. Yes.

12 Q. Now, it says:

13 "Implementation of any of the practices
14 described in the silvicultural
15 groundrules is expected to result in
16 minimal and acceptable environmental
17 effects because no particular resource
18 features, land uses or values which could
19 be negatively affected have been
20 identified in the land area to which they
21 apply."

22 A. I see that statement.

23 Q. Now, in that statement, aren't you
24 really saying that because you have identified your
25 areas of concern and taken those out of the land base,

1 that is the reason why environmental protection is
2 inherent in the groundrules?

3 A. Your question is: Is that the reason
4 why environmental protection is inherent? No, I don't
5 think that's the only reason.

6 Q. Okay. Would you agree with me that's
7 one of the reasons that's given here as to why
8 environmental protection is inherent in the groundrules
9 because you have already taken out other non-timber
10 values and put them in your areas of concern?

11 A. Yes, that's certainly one of the
12 reasons.

13 Q. Okay.

14 A. And I think I gave the other reason
15 yesterday in a kind of a summary of what our evidence
16 is on effects.

17 Q. Okay. Do you want to -- I am not
18 quite sure what you are referring to, so if you can do
19 it briefly.

20 A. Yes, I will. The statement that the
21 effects aren't significant because those effects are no
22 greater than would occur in the natural environment
23 taking into account natural disturbances and their
24 frequency, intensity, duration and extent.

25 Q. So it's the natural disturbance

1 benchmark that you are also relying on?

2 A. It's the benchmark. That's right.

3 Q. Okay.

4 THE CHAIRMAN: Ms. Seaborn, I am
5 wondering if this might be a convenient time to take a
6 short break and come back until about one o'clock?

7 MS. SEABORN: In fact, Mr. Chairman, if
8 we take a break now, I can assure you I will be
9 finished before one.

10 THE CHAIRMAN: Okay.

11 MS. SEABORN: Thank you.

12 THE CHAIRMAN: We will break for 10
13 minutes.

14 ---Recess taken at 12:05 p.m.

15 ---On resuming at 12:25 p.m.

16 THE CHAIRMAN: Thank you. Be seated.

17 MS. SEABORN: Q. Mr. Hynard, could you
18 have a look at Exhibit 527 which is the interrogatory
19 package that I filed this morning. Do you have that
20 wioth you?

21 MR. HYNARD: A. I do. Oh, no, I don't.

22 Q. And if you could have a look at
23 Question 5 which is the second page. And our question
24 is somewhat long, but I think the crux of it is the
25 last sentence on Question 5 where it states:

1 "At what point in the timber management
2 planning process is the logging system
3 specified and where specifically in the
4 timber management planning manual is this
5 set out?"

6 And the answer that's given is that:

7 "The logging method is specified at Step
8 2 of the management planning process as
9 set out on page 109 of the Class EA
10 document."

11 And then the reference is given for the
12 timber management planning manual.

13 Now, if you turn to page 150 of the EA, I
14 just want to be clear that I understand this. Now, the
15 Step 2 that's referred to in the response, that would
16 be where it says:

17 "Selection of silvicultural systems and
18 determination of silvicultural
19 groundrules."?

20 A. That's right.

21 Q. Okay. Now, could you also turn now
22 to Exhibit 512 and that was the excerpt from the Red
23 Lake Crown Management Unit Plan. Do you have that in
24 front of you?

25 A. No.

1 Q. That was the excerpt with the Table
2 4.11.2, Silvicultural Groundrules for Normal
3 Operations.

4 A. I have Table 4.11.1 from the Red Lake
5 Plan.

6 Q. Okay. Now, Mr. Hanna asked you some
7 questions --

8 THE CHAIRMAN: Is it .1 or .2. We have
9 .2 and .3, tables --

10 MS. SEABORN: That's the one I have, Mr.
11 Chairman.

12 Q. Could you look at 2 and 3, that's the
13 excerpt that we have

14 MR. HYNARD: A. Oh sorry. Sure, .2 and
15 .3.

16 MR. FREIDIN: I think, just for the
17 record, Mr. Chairman, that those are just -- the last
18 .2, .3, you know go on, .4, .5 was Mr. Multimaki's way
19 of indicating what the page number of Table 4.11 is.

20 It's just Table 4.11 and the last -- the
21 .2, the .2, the .4 are just the page numbers of that
22 table.

23 THE CHAIRMAN: Okay.

24 MR. HYNARD: I think I'm at the one where
25 you are now.

1 MS. SEABORN: Q. Okay. The second page
2 of Table 4.11?

3 A. Yes.

4 Q. Okay. Now, Mr. Hanna asked you some
5 questions about the number of combinations that were
6 available to the forester at this stage of the planning
7 process. Do you recall that?

8 A. I certainly do. I was thinking
9 afterwards if he had asked for the permutations, we
10 could have even got a larger number.

11 Q. Okay. Now, what I was unclear about
12 is that in the interrogatory response I was directed to
13 the planning process at Stage 2 and then I had a look
14 at the silvicultural groundrules.

15 And it appears to me that at the stage of
16 identifying silvicultural groundrules in terms of
17 choice of logging system, a choice still exists; is
18 that correct?

19 A. I see two options on that page.

20 Q. Right. And if we go to the next page
21 under Method of Harvest, we have all three options
22 listed?

23 A. Three options there, yes, yes. And I
24 said to Mr. Hanna that I presumed that presumed that
25 all three options were acceptable.

1 Q. Okay. So at that point in the
2 planning process, if someone was reviewing the
3 groundrules they still would not know exactly what
4 logging system was going to be employed?

5 A. That's right, they wouldn't know.
6 Any one of those three could be acceptable.

7 Q. Okay. And would that -- the final
8 decision for that logging system, would that be
9 determined in the annual work schedule -- annual work
10 plan?

11 A. I don't believe that the method of
12 harvest would appear in the annual work schedule.
13 That's not my recollection anyway. That would be left
14 to the company and they could employ any one of those
15 three acceptable options shown on that page.

16 Q. So in terms of the logging system and
17 the option, it may not be determined which system they
18 want to employ until they actually go out into the
19 field?

20 A. That's right, and that's because all
21 three are acceptable.

22 Q. Okay. Mr. Hynard, are you familiar
23 with the concept of allocating harvest on the basis of
24 the prime sites approach?

25 A. Yes, I am familiar with the concept.

1 Q. Okay. And is this a concept that you
2 would take into account when you are allocating stands
3 for harvest within your management unit?

4 A. In Minden did you mean?

5 Q. Yes.

6 A. Well, the concept of using prime
7 sites within stand allocations mean that where choices
8 exist between stands that are eligible for harvest,
9 that a preference would be given to allocating one
10 which was on a prime site, the purpose of which is to
11 expend your silvicultural funds and get your timber
12 growing on those sites first rather than cut the
13 non-prime sites and expend your efforts there first.

14 Q. And this is --

15 MR. FREIDIN: I think he wanted to finish
16 the answer.

17 MS. SEABORN: I'm sorry.

18 Q. Go ahead.

19 MR. HYNARD: A. Yeah, I didn't really
20 answer your question yet and I have been buying time
21 here trying to think: Well, how does that fit.

22 I used those principles but I will -- I
23 cannot today articulate exactly how I will use that
24 principle in allocating stands because on my unit I
25 have so many balls in the air and that's only one in

1 the choice of allocating stands.

2 Q. Mr. Greenwood, is it your
3 understanding that the Ministry is moving away from the
4 philosophy of oldest first to the prime sites approach?

5 MR. GREENWOOD: A. I don't know that the
6 two are comparable. The prime site, as Mr. Hynard
7 said, is directing your investments to obtain the best
8 return on your investments.

9 The oldest first principle is related to
10 the process of allowable depletion and where you should
11 be taking that depletion from. I think they are two
12 separate concepts.

13 Q. Okay.

14 A. The two could come together when you
15 are allocating, but you would be weighing them as two
16 separate factors when you are making your allocation.

17 Q. I don't want to spend a lot of time
18 on this because this concept was brought up in earlier
19 panels, but where it comes from is from the Forest
20 Resources of Ontario which is Exhibit 56 and if you
21 look at page 3 of that, Mr. Greenwood. Do you have
22 that?

23 A. No, I don't.

24 MS. BLASTORAH: (handed).

25 MR. GREENWOOD: Which page, please?

1 MS. SEABORN: Q. Page 3.

2 M R. GREENWOOD: A. I have it.

3 Q. The second full paragraph.

4 A. Yes.

5 Q. "This strategy will enable the
6 Ministry to establish the new man-made
7 forest which the forest industry will
8 depend on in the future, however, moving
9 to a prime sites approach will also mean
10 modifying harvesting practices. In the
11 past, the harvesting strategy has been to
12 cut the oldest and often over-mature
13 stands first so that the maximum amount
14 of wood could be harvested from the old
15 naturally created forest."

16 And then the last sentence says:

17 "As a result, the Ministry and the
18 companies will be modifying their
19 harvesting strategies to permit
20 harvesting of younger stands on prime
21 sites, thus facilitating the prime sites
22 regeneration strategy."

23 And what I'm trying to get a sense of,
24 Mr. Greenwood, is: How is that philosophy taken into
25 account when say you or Mr. Hynard as a forester are

1 allocating your stands for harvest?

2 A. Sure. I think the answer is right in
3 that paragraph actually. The sentence that continues
4 from where you left off at the top:

5 "The Ministry has recognized that there
6 are costs to this harvesting strategy and
7 the costs that they relate to is a
8 road-building cost particularly."

9 Q. Right.

10 A. And, therefore, when you are
11 determining a prime site, one of the factors that you
12 would weigh in terms of this return on investment is
13 the cost of road building.

14 So if the oldest first principle
15 suggested that you should be allocating a stand which
16 is 30 miles from the end of your nearest road, prime
17 site might suggest -- because that stand is strictly
18 old, the prime site strategy might suggest that there
19 is a stand which, in terms of return on investment, is
20 closer to the end of that road and, therefore, it
21 should be harvested because in terms of overall return
22 it gives the greatest rate of return.

23 So there are the two separate principles
24 and this paragraph states that harvesting oldest first
25 was so that the maximum amount of wood could be

1 harvested and that is what I was suggesting was a
2 separate principle. When you overlay the cost factor,
3 then the two come together in an allocation.

4 MR. HYNARD: A. And these two separate
5 principles can be in conflict.

6 Just to put two balls in the air: If we
7 have a forest predominated by old that's in a decadent
8 state and yet the market demand is such that you are
9 cutting much below your maximum allowable depletion, if
10 you confine your cutting to the old decadent timber,
11 you will always -- it's like taking -- Dr. Baskerville
12 said, taking the rotten apples out of the barrel, you
13 will always be eating rotten apples because they are
14 rotting at a rate faster than you are taking them out.

15 And so if you were in that circumstance
16 it might not be a very wise strategy. You may prefer
17 to -- you are certainly going to consider that, but you
18 are considering this prime site approach as it's
19 articulated here to and there may be lots of other
20 balls in the air too.

21 So these are all factors.

22 Q. Okay. And that's useful. I think
23 we'll probably come back to that issue in terms of
24 regeneration in Panel 11.

25 I just have a few more questions for Mr.

1 Clark. Mr. Clark, I think in your evidence you said
2 that the tourism guidelines can be distinguished from
3 the Fish and Moose Habitat Guidelines in terms of any
4 system of deviation recording?

5 MR. CLARK: A. Yes, I think I did. I
6 said there really wasn't a system of deviation
7 reporting.

8 Q. And one of the main differences is
9 that what is mandatory about the tourism guidelines is
10 this collaboration issue that we talked about earlier
11 today?

12 A. That's correct.

13 Q. And I think in your evidence you
14 pointed to the Oba Lake example that Mr. Greenwood
15 described for us as an example of where a deviation
16 reporting would be difficult?

17 A. Well, yes, I think- that is correct,
18 yes.

19 Q. Okay. And at the same time I think
20 we've looked at Oba Lake as being a perfect example of
21 successful collaboration?

22 A. I would call it a good example.

23 Q. That's fair. Now suppose, Mr. Clark,
24 in Oba Lake you had come to the same solution that Mr.
25 Greenwood was able to arrive at, but one of the parties

1 involved in that solution was not happy.

2 Can we just assume that for the moment?

3 A. Yes.

4 Q. Okay. And so what you would have is
5 a situation where you had applied a solution that was
6 in accordance with the guidelines, but you still have
7 someone who is unhappy. Do you agree with that?

8 A. Yes, that can happen.

9 Q. Okay. Now, one of the options for
10 that unhappy party would be to request for a bump-up?

11 A. That's correct.

12 Q. Now, would you agree with me that my
13 client, the Minister of the Environment, would want to
14 know about this sort of situation?

15 A. Yes.

16 MS. SEABORN: Thank you, gentlemen.

17 Those are all my questions, Mr. Chairman.

18 THE CHAIRMAN: Thank you, Ms. Seaborn.

19 Very well, ladies and gentlemen, we will
20 adjourn for the weekend and return for Monday at 1:00
21 p.m.

22 ---Whereupon the hearing adjourned at 12:38 p.m., to be
23 reconvened on Monday, May 1st, 1989, commencing at
24 1:00 p.m.

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